KNF | KOMISJA NADZORU FINANSOWEGO

Report

on the activities of the Special Task Force for Financial Innovation in Poland

November 2017

KNF

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The Task Force was made up of representatives of 22 public institutions and market representatives

Financial innovations, known as "FinTech", have recently become a leading factor in the transformation of the financial sector on a global scale. More and more financial market institutions treat innovation as a fundamental method for building a competitive advantage. Technological changes enable creation of new business models, an increased scope of activities, and enhanced service quality. Consumers, particularly in younger age groups, welcome the trend of digitalization and are eager to use innovative solutions involving remote electronic channels, mainly via internet and mobile devices. The FinTech sector includes, inter alia, innovative supervised entities (e.g. banks, payment institutions, insurance companies, and investment firms) and non-supervised entities (often startups).

The swift development of the FinTech sector poses a significant challenge for financial market supervisory authorities, as well as regulators responsible for devising legislation suited to the digital economy. Many new market solutions are arising which often extend beyond traditionally understood categories of financial services or products. A proactive approach of supervisory and regulatory authorities to creating a favourable regulatory and legal environment for the development of the FinTech sector is of particular importance for the position of Poland as an aspiring centre of financial innovation.

Recognizing the significant contribution of new technologies to the development of the Polish financial market, the Office of the Polish Financial Supervision Authority (KNF), the Ministry of

[1] FinTech (Financial Technology) – innovative financial services based on information technology (IT)

Finance and the Ministry of Economic Development came up with the initiative to create the Special Task Force for Financial Innovation in Poland. The KNF Office undertook to coordinate its activities. The objective of the Task Force was to identify legal, regulatory and supervisory barriers to the development of financial innovations in Poland and to propose solutions and actions that could eliminate or limit the identified barriers. The work of the Task Force focused on areas that directly impact the growth of innovation, while maintaining the security of services on offer in order not to undermine customers' confidence in the financial market. The Task Force was made up of representatives of 22 institutions, covering a wide range of public institutions (regulatory and supervisory authorities) and market institutions (both supervised and non-supervised). The work of the Task Force consisted of an analysis of over 100 barriers to the development of FinTech identified by market participants.

The KNF Office appointed a dedicated organizational unit for the development of financial innovations

The Task Force sought to begin taking actions aimed at removing the identified barriers as soon as possible, in the course of its activities, i.e. before publishing this Report, in particular by introducing, through relevant entities, appropriate organizational and process-based solutions, working out positions enhancing legal certainty, and proposing changes to legal provisions within ongoing legislative processes. With regard to the remaining barriers, the Task Force proposed solutions and recommendations for further activities to be undertaken by relevant bodies and entities which could eliminate or limit the identified barriers. It should be pointed out in this respect that for the activities of the Task Force to be fully successful, it is vital for the addressees of these recommendations to undertake the specified activities.

The Task Force analyzed over 100 barriers to the development of FinTech

The results of the work of the Task Force indicate that the greatest problem hindering the development of financial innovations in Poland is a lack of legal certainty: market participants need to know precisely what provisions apply in terms of innovative solutions. As established by the Task Force, supervisory and regulatory authorities should inform market participants as openly as possible about their positions on innovative products and services and maintain an effective dialogue with them. In response to this recommendation, the leadership of the KNF Office decided to undertake a number of measures to support the development of financial innovations through supervision, in particular to appoint a dedicated organizational unit for the development of financial innovations and to implement the Innovation Hub concept, i.e. an information and training procedure under which the supervisory authority will launch information initiatives in the regulatory and legal field for entities in the FinTech sector. A subpage devoted to FinTech was also launched on the KNF website, including links to descriptions of licensing and registration processes.

A subpage devoted to FinTech was launched on the KNF webside

The KNF Office decided to implement the Innovation Hub concept

The Ministry of Finance proposed a regulation enabling the operation of small payment institutions

An important measure undertaken during the course of the work of the Task Force was inclusion by the Ministry of Finance in the draft Payment Services Act (as part of the implementation of PSD2) of provisions facilitating the operation in Poland of small payment institutions (SPIs). Operation in the form of an SPI will require registration by the KNF upon fulfilling certain requirements, but the requirements will be greatly reduced compared to those for national payment institutions. As assessed by the Task Force, the introduction of SPIs will stimulate the development of innovation on the payment services market due to less restrictive barriers to market entry. It should also be pointed out that the Ministry of Digital Affairs is working on launching a research programme under INFOSTRATEG in which it will provide resources for building safe testing environments (dedicated IT platforms aggregating large datasets and programming interfaces) for research and development of transactional and financial services also by entities from the FinTech sector.

Another important factor for the development of the FinTech sector is financial support to innovative entities from state institutions and bodies. In the course of the Task Force's work, it was noted that various support programmes for the development of financial innovations already exist in Poland (e.g. Start in Poland, Starter, and Scale UP), and a central location for presenting information in this respect should be provided. In response to this recommendation, the Ministry of Economic Development prepared information on its website concerning various forms of financial support for the FinTech sector.

During the work of the Task Force it was indicated that to ensure appropriate legal conditions for the development of financial innovations in Poland, it is necessary to eliminate "gold-plating", i.e. the practice of adopting national solutions more demanding than required by EU law. Legal provisions indicated by market operators which may be deemed to be gold-plating were included in the catalogue of barriers to the development of financial innovation the Task Force was working on.

Extensive and burdensome reporting requirements present a significant barrier to the development of the FinTech sector. As established by the Task Force, this barrier could be significantly reduced by more extensive use of regulatory technologies (RegTech) in Poland. It was emphasized that in addition to their great potential to reduce costs, an advantage of RegTech solutions is that they can be swiftly adapted to the changing regulatory environment. RegTech solutions may significantly support the collection and reporting of data to fulfil regulatory requirements with the use of such technologies as Big Data, advanced analytics, process automation, machine learning, and data visualization.

The Ministry of Digital Affairs is working on launching a research programme which will provide resources for building safe testing environments for transactional and financial services

Modern services in the field of financial innovations are very often based on the application of solutions delivered by external outsourcing companies. The Task Force analyzed the provisions on outsourcing applied in the supervised sectors of the financial market. Representatives of the market participants pointed out that certain provisions are excessively restrictive and hinder the development of innovations, in particular provisions excluding limitations on the service provider's liability to the principal (bank, investment firm, credit union, or payment institution) or prohibiting sub-outsourcing. In the course of the Task Force's work, it was decided to modify these provisions, given the lack of analogous regulations in other European countries or elsewhere in the world, as well as the limited possibilities for supervised entities to cooperate with service providers.

The Ministry of Economic Development prepared information on its website concerning various forms of financial support for the FinTech sector

The Task Force also indicated that to ensure the development of financial innovations it is necessary to facilitate the use of cloud computing services by supervised entities as a more secure, less expensive solution providing greater availability to customers and recipients of services. In response to this issue, the KNF Office performed a thorough analysis of supervisory expectations concerning the use of cloud-based solutions by supervised entities, and prepared a position in this respect.

Poland has the right profile to become one of the key FinTech centres in Europe

Another key factor impacting the development of financial innovations in Poland is the possibility of replacing paper documents with digital equivalents. This aspect is particularly important for entities operating exclusively in an online environment. The Task Force worked out legislative proposals offering financial institutions greater freedom of action through electronic channels.

In the course of the work of the Task Force, representatives of the market participants pointed out that it would be reasonable to change the rules for providing access to data processed in public registers, so that the data could be more broadly accessible and useful for providing innovative services by FinTech entities, including banks and insurance companies. Openness and electronic access to public data can not only speed up trading and enhance the security of financial services by enabling more effective identification and authentication of customers, but they can also reduce costs and save time for citizens and the state.

In the course of the work on crowdfunding, it was established that the current stage of its development in Poland does not justify the development of dedicated regulations in this respect, but it is necessary to take measures aimed at enhancing legal certainty among market participants under the current provisions. These findings led to preparation of descriptions of the identified crowdfunding models with an indication of the applicable laws.

Security of innovative financial services as a condition of customers' trust (Secure FinTech)

The development of the FinTech sector is of fundamental significance for the Polish financial market and for the whole economy. There are enormous possibilities to use modern technologies in financial services. Poland has the right profile to become one of the key FinTech centres in Europe. In the course of the Task Force's work, it was pointed out that under the strategy for the development of FinTech in Poland, it is necessary to establish priorities for FinTech, properly identify the advantages of the Polish economy (e.g. the strong IT sector), and create system-based solutions to support implementation of the strategy. Additionally, it is necessary to create a unique economic microclimate, prepare the appropriate legal and regulatory environment, and ensure effective and close cooperation between entities of the FinTech sector, suppliers of technologies, and regulatory and supervisory authorities. The findings of the Task Force demonstrate that it is worth taking up joint initiatives for the development of financial innovations which can favourably change the landscape of the Polish financial market while maintaining security (Secure FinTech) and an appropriate level of consumer protection.

This Report summarizes the work of the Task Force. It presents the barriers to the development of the FinTech sector in Poland identified by financial market entities, the actions undertaken by the Task Force to remove them, and proposed solutions and recommendations for further activities to be undertaken by the appropriate bodies and entities which will contribute to the creation of a favourable regulatory and supervisory environment for the development of the FinTech sector in Poland.

I. Composition and working procedure of the Task Force

Special Task Force for Financial Innovation (FinTech) in Poland

On 9 December 2016, the Chairman of the Polish Financial Supervision Authority (KNF) held a meeting with representatives of the Ministry of Finance and the Ministry of Economic Development to establish potential course of actions for the development of financial innovations (FinTech) in Poland. The meeting resulted in the appointment of an interministerial Special Task Force for Financial Innovation in Poland (the "Task Force"), with the KNF Office as its coordinator.

The objective of the Task Force was to identify legal, regulatory and supervisory barriers to the development of financial innovations (FinTech) in Poland and to work out proposed solutions and actions to be taken by competent bodies and entities (including proposed changes to law and other regulations and changes to practices in use) which could eliminate or limit the identified barriers.

The Task Force brought together representatives of 22 institutions, including a wide range of public institutions (regulatory and supervisory authorities) and market representatives (from the supervised and non-supervised market). Representatives of the following institutions were involved in the work of the Task Force:

1. Office of the Polish Financial Supervision Authority (KNF Office)
2. Ministry of Finance (MF)
3. Ministry of Economic Development (MED)
4. Ministry of Digital Affairs (MDA)
5. National Bank of Poland (NBP)
6. Inspector General for the Protection of Personal Data (IGPPD)
7. Office of Competition and Consumer Protection (OCCP)
8. Polish Bank Association (PBA)
9. Council of Depository Banks (CDB)
10. National Association of Cooperative Banks (NACB)
11. National Association of Credit Unions (NACU)
12. Polish Organization of Non-Banking Payment Institutions (PONBPI)
13. Chamber of Brokerage Houses (CBH)
14. Polish Insurance Association (PIA)
15. Chamber of Fund and Asset Management (CFAM)
16. Polish Association of Listed Companies (PALC)
17. Warsaw Stock Exchange (WSE)
18. National Depository for Securities (KDPW)
19. National Clearing House (NCH)
20. FinTech Poland Foundation (FinTech Poland)
21. Coalition for Polish Innovations (CPI)
22. Conference of Financial Companies in Poland (CFC)

The Task Force focused on areas that directly contribute to enhanced innovativeness, while simultaneously maintaining the security of services in order not to undermine customers' confidence in the financial market. In the course of the work, particular attention was paid to the correct formulation of legal amendments that were currently being processed (e.g. implementation of PSD2 and MiFID II).

The first meeting of the Task Force took place on 13 January 2017 at the KNF Office. Due to an extensive thematic scope of the identified barriers to the development of the FinTech sector, six Working Sub-Groups were sorted out in the course of the Task Force's work:

At the KNF Office, there were a total of 31 working meetings of the Task Force, which were also held by email. The progress of the work was reported on the KNF website on an ongoing basis.

[2] PSD2 – Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market

[3] MiFID2 – Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU

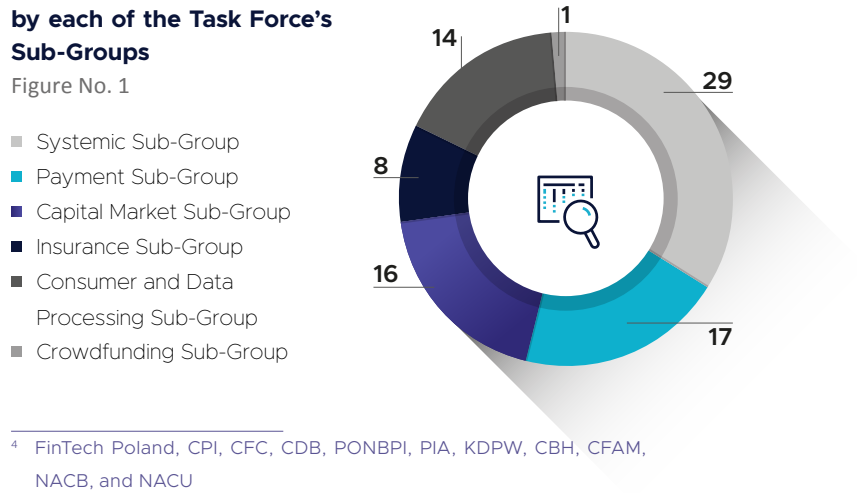
II. Identification of barriers to the development of financial innovations (FinTech) in Poland

The Task Force started its work by identifying legal, regulatory and supervisory barriers to the development of the FinTech sector. As a result of the analysis, 11 institutions representing market operators reported 145 barriers, which became the starting point for the Task Force's further work. During the process, some of the analyzed barriers were combined due to their similar nature, which reduced their total number to 85. Additionally, it should be pointed out that during the work of the Task Force, there were 12 barriers identified related to crowdfunding, but for the purposes of this Report they were combined into one barrier among the 85 barriers mentioned above, pointing to a lack of legal certainty in this field.

Figure No. 1 presents the distribution of barriers analyzed by individual Task Force Sub-Groups.

Number of barriers analyzed by each of the Task Force's Sub-Groups

Figure No. 1



[4] FinTech Poland, CPI, CFC, CDB, PONBPI, PIA, KDPW, CBH, CFAM, NACB, and NACU

THE MOST IMPORTANT IDENTIFIED BARRIERS RAISED THE FOLLOWING ISSUES:

1. Supporting financial innovations as one of the objectives of the supervisory authorities
2. Issuance by the supervisory authority of binding positions, the lack of legal certainty as to financial innovations
3. The need to conduct an effective dialogue with the supervisory authority
4. Ensuring a favourable legal and organizational environment to test innovative financial services (creating a so-called regulatory sandbox)
5. National regulations more excessive than EU law (so-called gold-plating)
6. Excessive length and formality of proceedings by the supervisory authority
7. Excessive and burdensome reporting requirements
8. Problems resulting from restrictive provisions on outsourcing
9. The lack of a strategy for actions supporting the development of financial innovations in Poland
10. The lack of financial support for the development of financial innovations
11. The use of cloud computing services in business
12. Replacing paper documents with digital equivalents
13. Limited access of financial institutions to data processed in public registers
14. The lack of legal certainty as to the operation of crowdfunding platforms in Poland

The complete list of barriers to the development of the FinTech sector is included in Annex No. 1 (the numbering of the barriers does not reflect their importance).

III. Analysis of identified barriers, actions taken to remove them, and recommendations for further activities

68%

of the identified barriers to the development of FinTech in Poland are already during removal

The Task Force analyzed all the identified barriers to the development of the market of financial innovations (FinTech) in Poland. In particular, the barriers were evaluated in terms of their relevance and materiality, as well as the possibility to make changes to law and other regulations or changes to supervisory practices. With regard to the barriers which the Task Force found could be removed or limited, appropriate proposals of solutions were worked out. The objective of the Task Force was to begin appropriate action as soon as possible to remove the identified barriers during the work of the Task Force, i.e. before publishing this Report, in particular by introducing, through the competent entities, appropriate organizational and process-based solutions, working out positions to enhance legal certainty, and reporting proposals as to changes to legal provisions currently undergoing legislative processes. With regard to the remaining barriers, the Task Force worked out relevant recommendations for further activities, including their addressees. It should also be pointed out that certain barriers were found unjustified and were omitted by the Task Force.

The definitions of the final statuses of the barriers assigned to each of the analyzed barriers pursuant to the work by the Task Force, including the number of identified cases specified in Annex No. 1:

- **Removed (3)** – a barrier has been removed completely, no recommendations for further activities
- **During removal (58)** – certain activities have already been undertaken and/or recommendations for further activities have been formulated
- **Not removed (12)** – barrier is related to the FinTech field, but no acceptable solution has been worked out in the course of the Task Force's activities
- **Unjustified (11)** – barrier does not exist
- **Beyond the scope of work (1)** – a barrier does not refer to the FinTech field

Figure No. 2 presents the distribution of the statuses of the barriers covered by the activities of the Task Force.

Distribution of statuses of barriers to development of the FinTech sector
Figure No. 2

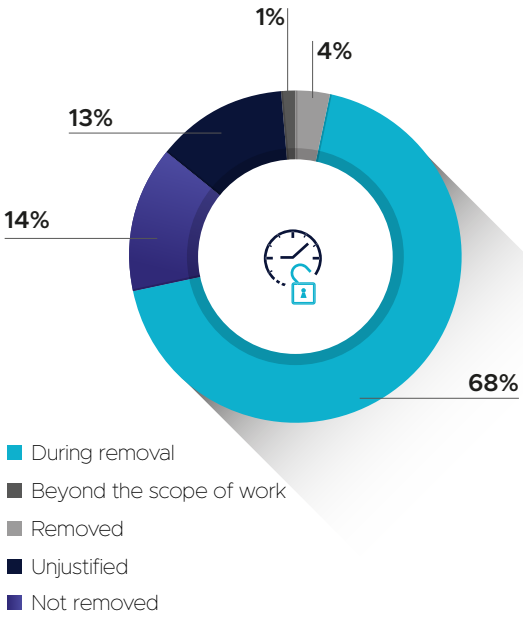
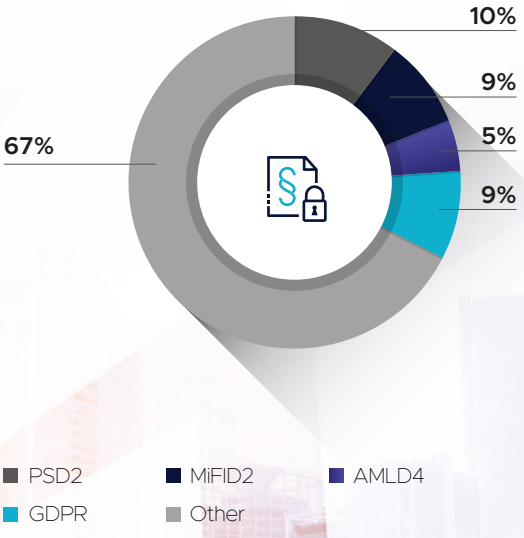


Figure No. 3 presents the main fields of activities with regard to the barriers with the status "During removal". It should be pointed out that it will be possible to remove some of the barriers in the ongoing legislative processes related to implementation into the Polish legal system of PSD2 (10%), MiFID II (9%), AMLD4[5] (5%), or GDPR[6] (9%).

Barriers to development of the FinTech sector during removal – fields of undertaken activities
Figure No. 3



[5] AMLD4 – Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing

[6] GDPR – Regulation (EU) 2016/678 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

The proposed solutions worked out by the Task Force

(as presented thoroughly in Annex No. 1)

1. SUPPORTING FINANCIAL INNOVATIONS AS ONE OF THE OBJECTIVES OF THE SUPERVISORY AUTHORITY

(Barrier No. 1 in Annex No. 1 – Status: during removal)

In the course of the Task Force's work, representatives of the market participants pointed out that supporting financial innovations is not one of the objectives of the financial market supervisory authority. Nor has the KNF been expressly charged with such a task. The objectives implemented by the supervisory authority are of huge importance—above all, ensuring the stability, security and transparency of the market, building confidence, and ensuring that the interests of market participants are protected. Extension of the statutory objectives of the financial supervisory authority to include supporting the development of the sector's innovativeness may become a basis for proactive supervisory activities and for further development of the financial market in Poland.

As a result of its work, the Task Force found it justified to formulate an additional task for the supervisory authority in the Financial Market Supervision Act with regard to support for the development of financial innovations, while taking into account the following arguments:

a. A positive signal for market participants in Poland and beyond its borders (a significant image aspect in terms of building a regional FinTech Hub in Poland)

b. Ensuring sustainability of the activities of the supervisory authority for the development of financial innovations

c. The possibility to gain appropriate human resources in order to build organizational solutions of the KNF dedicated to the FinTech field (see also Barrier No. 4 in Annex No. 1)

ACTIONS UNDERTAKEN:

The Ministry of Finance proposed a change to the Financial Market Supervision Act to extend the tasks of the KNF to include supporting the development of financial innovations[7]

[7] https://legislacja.rcl.gov.pl/projekt/12300403

RECOMMENDATIONS FOR FURTHER ACTIVITIES:

The Ministry of Finance should finalize work on the draft Act Amending the Financial Market Supervision Act and Certain Other Acts including the extension of the tasks of the KNF to include supporting the development of financial innovations

2. ISSUANCE BY THE SUPERVISORY AUTHORITY OF BINDING POSITIONS, THE LACK OF LEGAL CERTAINTY AS TO FINANCIAL INNOVATIONS

(Barrier No. 2 in Annex No. 1 – Status: during removal)

In the course of the Task Force's work, representatives of the market participants pointed out that entities of the FinTech sector need to be informed of whether a KNF permit or consent is required to carry out a particular activity. The range of legal provisions regulating the operation of the financial services market and their complex nature very often leads to a situation where small entities not employing external advisers do not undertake innovative ventures because they are uncertain of their compliance with the expectations of the regulatory and supervisory authorities. It was pointed out that it would be justified to introduce an obligation for the supervisory authority to issue binding positions in light of changes in the legal environment and provide a central place for their publication.

As established by the Task Force, the procedure for issuing tax interpretations cannot be accepted as a model for the supervisory authority to issue binding positions. With regard to directly applicable EU provisions, statutory provisions and regulations, the KNF is not authorized to issue binding interpretations, but can only present its own position. Nevertheless, it was agreed that even non-binding positions of the supervisory authority may exert a favourable impact on enhanced legal certainty among market participants, in particular in the FinTech sector. Poland has a chance to become a leading centre of financial innovations on a regional scale and it is necessary to provide for solutions that will mitigate the barrier of the lack of legal certainty, e.g. by ongoing and uniform publication of positions of the supervisory authority on the KNF website.

RECOMMENDATIONS FOR FURTHER ACTIVITIES:

The KNF Office should establish an effective channel of communication (including creating a contact list) between the KNF Office and other institutions (e.g. the MF, NBP, OCCP, IGPPD, and the Financial Ombudsman) to cooperate in the field of the development of financial innovations

ACTIONS UNDERTAKEN:

The KNF Office reviewed the procedure for publishing opinions/positions of the supervisory authority on its website with regard to individual sectors of the financial market in order to standardize the practice in use

The positions of the KNF and the KNF Office addressed to individual sectors of the financial market are published on the official website of the KNF in the form of announcements.

The KNF Office launched a sub-page of the KNF website which includes information on different types of innovative financial services that could be helpful in classifying particular activities in terms of the need to obtain a licence, including a list of positions of the supervisory authority, binding regulations, and frequently asked questions and answers (FAQ)[8]

The KNF Office analyzed the issue of changing the approach to inquiries by non-regulated entities (startups), including the risk of an excessive increase in the number of inquiries

The KNF Office has applied a new approach with regard to answering inquiries by non-supervised entities which intend to enter the financial market, which is particularly dependent on obtaining a permit, consent or approval by the KNF. In this situation, the supervisory authority will provide complete answers, including an important condition that in giving an answer it will specify every time that the answer is based on the concrete factual state described by the supervised entity, and the evaluation presented by the KNF does not exclude the possibility for other bodies of public authority to present their positions.

[8] https://knf.gov.pl/dla_rynku/fin_tech

3. THE NEED TO CONDUCT AN EFFECTIVE DIALOGUE WITH THE SUPERVISORY AUTHORITY

(Barrier No. 3 in Annex 1 – Status: removed)

In the opinion of the Task Force, the stability and transparency of the regulatory environment is of key importance for the development of innovative financial services. It should be emphasized that a favourable regulatory and legal environment and an adequate level of legal certainty in this respect are important for the position of Poland as a country aspiring to become a centre of financial innovation. However, it should be pointed out that the implementation of an effective policy for supporting the development of the FinTech sector requires, in particular, the KNF Office to introduce appropriate organizational and process-based solutions. In order to carry out operational activities in the FinTech sector effectively and to develop supervisory competences with regard to modern financial technologies, an organizational unit dedicated to the FinTech sector should be established in the structure of the KNF Office and appropriate personnel should be appointed. Based on observations of foreign supervisory authorities, such an organizational unit is necessary to ensure that the supervisory authority can react to inquiries from entities in the FinTech sector (supervised or non-supervised) swiftly and effectively, and undertake corrective measures to support the development of financial innovations.

ACTIONS UNDERTAKEN:

The KNF Office established in its structure an organizational unit for financial innovation (FinTech) responsible among other things for coordination of cases conducted at the KNF Office involving financial innovation, as well as dialogue with FinTech market participants

The main tasks of this unit will include in particular the drafting or coordination of the drafting of positions for entities from the FinTech sector, conducting dialogue with entities from the FinTech sector to exchange views, opinions and doubts as to a particular product or service in the FinTech sector, developing a sub-page of the KNF website on financial innovation, providing substantive support to departments of the KNF Office with regard to the FinTech sector, cooperation with other institutions and bodies of the state administration and foreign supervisory authorities with regard to FinTech, monitoring of changes to legal provisions and other regulations related to the sector of financial innovations, and performing analyses with regard to Fin-Tech solutions implemented in Poland and abroad.

In order to ensure that the dialogue with the supervisory authority is effective, the activities mentioned in point 2) were also undertaken.

4. ENSURING A FAVOURABLE LEGAL AND ORGANIZATIONAL ENVIRONMENT TO TEST INNOVATIVE FINANCIAL SERVICES (CREATING A SO-CALLED REGULATORY SANDBOX)

(Barrier No. 4 in Annex No. 1 – Status: during removal)

On the basis of the information published on the websites of foreign supervisory authorities and completed study visits, the KNF Office analyzed the initiatives taken up by foreign supervisory authorities for the development of financial innovations. The most important of these include:

a. **Innovation Hub –** an information and training procedure under which a special team of the supervisory authority launches informational initiatives in the regulatory and legal field for entities of the FinTech sector (contact point for market participants). Under this solution, the supervisory authority maintains correspondence and holds meetings with entities of the FinTech sector, informing them about regulations as well as facilitating the identification of potential sources of regulatory risk. It should be emphasized at the same time that the exchange of information is two-way in the Innovation Hub, which allows representatives of the supervisory authority to trace innovative solutions and draw conclusions to be used for devising supervisory policy.

b. **Regulatory Sandbox –** a more advanced form to support the FinTech sector which consists of ensuring a "safe space" where market participants may test their innovative solutions, products and financial services within a scope that is limited in time and by subject, with the participation of a group of customers.

In this context it should be emphasized that the regulatory sandbox usually constitutes a further stage of the particular supervisory authority's support for the development of the FinTech sector, due to its more advanced and often highly formalized nature. An innovation hub is usually built first within the structure of the supervisory authority (such an approach was adopted by the supervisory authorities in for example the United Kingdom (FCA) and the Netherlands (AFM), as well as outside Europe (e.g. in Singapore (MAS), Hong Kong (HKMA), and Australia (ASIC)).

The Task Force found it justified for the innovation hub concept to be implemented in the KNF Office first, by the organizational unit for the development of financial innovations (FinTech). Furthermore, it was agreed that at the later stage of work creation of a regulatory sandbox in Poland should be considered, because of its potentially important role in supporting the development of financial innovation. It was highlighted that not only startups could participate in the regulatory sandbox, but also large financial institutions with established market positions which are looking for new business models based on modern technologies.

It should also be pointed out that under the INFOSTRATEG Programme, the Ministry of Digital Affairs is preparing a research programme dedicated to emerging transactional and financial technologies. The ministry intends to use the programme to support the establishment of an ecosystem of transactional innovations in Poland, allocating funds to the building of safe testing environments in which transactional and financial innovations will be tested (blockchain/distributed ledger technology). This virtual sandbox, i.e. an information platform that will serve to aggregate large datasets and programming interfaces (APIs) for startups, large companies from the FinTech sector, and banks, will be a source of hard data that may potentially be used by the KNF Office in the formulation of recommendations and guidelines. The programming interfaces in the virtual sandbox will be a point of contact for market participants interested in financial innovations.

RECOMMENDATIONS FOR FURTHER ACTIVITIES:

The KNF Office should implement the Innovation Hub concept through a dedicated organizational unit for the development of financial innovations (FinTech)

The Ministry of Digital Affairs should implement a research programme dedicated to emerging transactional and financial technologies under the INFOSTRATEG Programme

5. NATIONAL REGULATIONS MORE EXCESSIVE THAN EU LAW (SO-CALLED GOLD-PLATING)

(Barrier No. 5 in Annex No. 1 – Status: during removal)

In the course of the Task Force's work, representatives of the market participants pointed out that to ensure appropriate conditions for the development of financial innovations in Poland, it is necessary to eliminate so-called gold-plating, i.e. the practice of implementing national solutions extending beyond the law adopted by the European Union.

As established by the Task Force, gold-plating is understood as supplementation of implemented provisions of EU law by additional national provisions, but this term should not be equated with the method in which Poland implements selected national options.

It was agreed that certain identified legal barriers in the nature of gold-plating could be eliminated in the course of ongoing legislative processes with the participation of the relevant regulatory bodies.

ACTIONS UNDERTAKEN:

The Task Force analyzed examples of gold--plating of Poland, as indicated by market entities, which hinder the development of financial innovations

Legal provisions that may be deemed to constitute gold-plating were included in selected barriers to the development of financial innovations the Task Force worked on:

- Barrier No. 11 – the demand to amend the provisions on outsourcing applied in supervised sectors of the financial market to eliminate the unlimited liability of the supplier of services to the principal (bank, investment firm, credit union, or payment institution)
- Barrier No. 12 – the demand to repeal provisions limiting the possibility for banks to sub--outsource, i.e. for external suppliers to subcontract outsourcing activities
- Barrier No. 34 – the demand to remove the requirement in the Act on the Prevention of Money Laundering and Terrorist Financing for obligated institutions to verify customers' addresses, which presents significant difficulties in the case of new personal identity cards
- Barrier No. 41 – the demand to amend the Payment Services Act with regard to the requirement for an applicant for a permit to carry out activity in the form of a national payment institution or a national electronic money institution to identify related entities
- Barrier No. 44 – the demand to remove from the Payment Services Act the requirement for users of payment services to submit a special application to receive correspondence by email

6. EXCESSIVE LENGTH AND FORMALITY OF PROCEEDINGS BY THE SUPERVISORY AUTHORITY

(Barrier No. 6 in Annex No. 1 – Status: during removal)

In the course of the Task Force's work, representatives of the market participants pointed out that one of the main regulatory and supervisory barriers to the development of the FinTech sector in Poland is the length and complexity of the proceedings for obtaining the KNF's authorization to carry out a licensed activity, in particular for rendering payment services. It was emphasized that it is necessary to amend the procedure for KNF proceedings to shorten the deadlines and reduce the volume of correspondence.

As established by the Task Force, an important factor hindering the possibility of expediting or deformalizing the proceedings conducted by the KNF is the procedure specified in the Administrative Procedure Code. Nevertheless, it was pointed out that the KNF Office should specify precise requirements (guidelines) for applicants for licences, including a description of the whole process of obtaining consent. It was established that appropriate links to the devised descriptions would be included on the sub-page of the KNF website on financial innovations (FinTech).

In the course of the Task Force's work, the draft amendment of the Payment Services Act (as part of the implementation of PSD2) was extended to include provisions facilitating the operation of small payment institutions (SPIs) in Poland. Operation in the form of an SPI will be subject to registration by the KNF upon fulfilment of certain requirements which are much reduced compared to those for national payment institutions.

ACTIONS UNDERTAKEN:

The KNF Office devised detailed descriptions of the licensing and registration processes (including relevant links to the prepared description on the sub-page of the KNF website devoted to FinTech)

The Ministry of Finance introduced to the draft amendment of the Payment Services Act (as part of the implementation of PSD2) provisions facilitating the operation of small payment institutions (SPIs) in Poland, including a simplified registration procedure[9]

[9] https://legislacja.rcl.gov.pl/projekt/12298151

RECOMMENDATIONS FOR FURTHER ACTIVITIES:

The Ministry of Finance should finalize its work on the amendment of the Payment Services Act (as part of the implementation of PSD2) to introduce provisions facilitating the operation of small payment institutions in Poland, including a simplified licensing procedure

7. EXCESSIVE AND BURDENSOME REPORTING REQUIREMENTS

(Barrier No. 10 in Annex No. 1 – Status: during removal)

In the course of the Task Force's work, representatives of the market participants pointed out that excessive reporting requirements constitute a significant barrier to the development of the FinTech sector. Although it generates quite significant costs, preparing certain information does not pose a major problem for large entities. However, for micro-enterprises, this is a major burden in terms of time and finances. There is a request to review the regulations in terms of the duplication of duties to report to various bodies of the administration and to eliminate reporting duties with regard to data already processed by public authorities. The volume of information financial institutions are obliged to deliver to individual offices is a barrier particularly for small entities to undertake innovative ventures, not only due to the fear of the increasing labour intensity for preparation of certain reports, but also due to limited resources (systems, HR etc) enabling performance of such duties.

As established by the Task Force, this barrier could be significantly limited through more extensive use of regulatory technologies (RegTech) in Poland. It was emphasized that in addition to a huge potential for cost saving, an advantage of RegTech solutions is that they can be quickly adapted to the changing regulatory environment. RegTech solutions can significantly support the collection and reporting of data to fulfil regulatory requirements by means of such technologies as Big Data, advanced analytics, process automation, machine learning, and data visualization.

In the course of the Task Force's work, on 31 May 2017 the FinTech Poland Foundation published a report titled "RegTech: The significance of regulatory innovations for the financial sector and the state", which was aimed not only at defining and improving the understanding of the term "RegTech", but also at placing it in a broader market and technological context. Of key importance was understanding the needs addressed by the phenomenon, as well as specifying the connection between FinTech and RegTech, a term which has become very popular in recent years. The report focuses not only on an analysis of regulatory technologies, market needs, and advantages that may be derived by financial institutions from RegTech solutions, but also emphasizes the role of the state in the process. To this end, the report reviews the approaches of the regulatory and supervisory authorities to RegTech in selected countries. Furthermore, the authors of the report used a set of recommendations and strategic scenarios to present proposals for Polish lawmakers and the national supervisory authority with regard to directions for the development of RegTech in Poland.

RECOMMENDATIONS FOR FURTHER ACTIVITIES:

Supervisory authorities (in particular the KNF, NBP, the Bank Guarantee Fund, and the Inspector General of Financial Information) should consider the possibilities for optimizing the collection of reporting based on proposals of innovative RegTech solutions indicated by market participants

8. PROBLEMS RESULTING FROM RESTRICTIVE PROVISIONS ON OUTSOURCING

(Barriers No. 11 and 12 in Annex No. 1 – Status: during removal)

In the work of the Task Force, representatives of the market participants pointed out that the Polish regulations on outsourcing by banks, credit unions, investment firms, and payment institutions do not make it possible to restrict the liability of the service provider to the principal for any injury to customers due to non-performance or improper performance of the contract. In the opinion of the market participants, these provisions create a significant barrier to the development of innovative solutions based on outsourcing and should be removed in light of:

a. The lack of analogous regulations in other European countries or elsewhere in the world

b. The limited possibilities to cooperate with service providers

c. The limitation on development of financial innovations (FinTech)

d. The lack of possibilities to enhance the effectiveness, quality and security of services

e. The need to use small IT providers who accept the restrictive provisions on outsourcing

f. The inability to reduce operating costs and equalize the competitive position

g. The limited optimization of implementation of legal requirements through the use of outsourced IT services.

In the course of the Task Force's work, the KNF Office performed an analysis of the provisions on outsourcing applied in supervised sectors of the financial market, to evaluate the provisions on limitation of the service provider's liability to the principal (bank, investment firm, credit union, or payment institution).

As a result of the analysis, the KNF Office made a strategic decision to take measures aimed at amending these provisions.

ACTIONS UNDERTAKEN:

The KNF Office devised a proposal to amend the regulations on outsourcing in the capital market (amendment of Art. 81c of the Trading in Financial Instruments Act) referring to the issue of limitation of the service provider's liability to the investment firm

First the proposal will be included in the regulations governing the activity of investment firms, and then will be similarly introduced in the regulations governing the activities of banks, credit unions, and payment institutions.

This proposal would repeal the obligatory ban on limiting the liability of a business or foreign business to an investment firm for injury caused to customers due to non-performance or improper performance of the contract, while introducing other solutions with similar objectives but more flexible for investment firms.

RECOMMENDATIONS FOR FURTHER ACTIVITIES:

The Ministry of Finance should take into account the proposed amendment of the Trading in Financial Instruments Act to allow for limiting the service provider's liability to the investment firm for any injury caused to customers due to non-performance or improper performance of the contract

As in case of the Trading in Financial Instruments Act, the Ministry of Finance should introduce amendments to the Banking Act, the Act on Credit Unions and the Payment Services Act to allow for limiting the service provider's liability to the bank, credit union, or payment institution for any injury caused to customers due to non-performance or improper performance of the contract

Moreover, in the course of the Task Force's work it was also pointed out that banks have limited possibilities to sub-outsource (e.g. to subcontract outsourcing tasks to other service providers). As far as the banking sector is concerned, the Banking Act permits the use of outsourcing only to the second level (contractor → subcontractor). Introduction of a ban on further sub-outsourcing in the banking sector may make it much harder to use outsourcing as such, where suppliers, particularly of IT services, use further subcontractors to a large extent. This is particularly noticeable in the case of cloud computing services, where the resources stored in the cloud environment are controlled or even owned by an entity other than the supplier.

As established by the Task Force, introduction of provisions allowing banks to outsource their activities on further levels would have a favourable impact on the digitalization of the Polish banking sector, particularly in using cloud computing solutions. The admission of multilevel bank outsourcing would imply the application of the same provisions as in case of the two admitted levels (in particular, it would be necessary to ensure the possibility of exercising effective supervision over further subcontractors). Additionally, the bank would have to approve each level of such outsourcing and any changes in this respect.

RECOMMENDATIONS FOR FURTHER ACTIVITIES:

The Ministry of Finance should introduce provisions allowing banks, insurance companies and credit unions to outsource their activities on further levels (while considering allowing this possibility exclusively in the IT field)

9. THE LACK OF A STRATEGY FOR ACTIONS SUPPORTING THE DEVELOPMENT OF FINANCIAL INNOVATIONS (FINTECH) IN POLAND

(Barrier No. 13 in Annex No. 1 – Status: during removal)

In the course of the Task Force's work, representatives of the market participants pointed out that unlike many other countries, Poland does not have a coherent strategy for supporting the market of financial innovations, which undermines its competitive position on the international arena. It was pointed out that priority activities in the FinTech sector should be established, the advantages of the Polish economy (e.g. the strong IT sector) should be recognized, and system-based solutions to support the implementation of the strategy should be created.

In the course of the Task Force's work, it was established that FinTech Poland would prepare a report titled "Poland as a FinTech Hub". The work on the report will include preparation of an analytical and research section concerning global trends in the construction of FinTech hubs, including the role of the state and supervisory authorities, as well as methods for engaging the market itself. This research will serve as a basis for formulating recommendations for further activities, in particular in the fields in which Poland has a chance to specialize as a FinTech Hub for Central & Eastern Europe.

RECOMMENDATIONS FOR FURTHER ACTIVITIES:

FinTech Poland should prepare and publish a report titled "Poland as a FinTech Hub"

The Ministry of Economic Development should prepare a strategy for supporting the development of financial innovations (FinTech) in Poland

10. THE LACK OF FINANCIAL SUPPORT FOR THE DEVELOPMENT OF FINANCIAL INNOVATIONS

(Barrier No. 14 in Annex No. 1 – Status: removed)

Businesses operating in the field of financial innovations point to the need to systematize the financial support for their operations by state institutions and bodies. They point out that the market lacks transparent information on potential methods for obtaining co-financing from public funds for the development of innovative solutions.

In the course of the Task Force's work, it was pointed out that there are various programmes in Poland to support the development of financial innovations (e.g. Start in Poland, Starter, and Scale UP) and this information should be presented in a central place. The Task Force established that information on different forms of financial support for entities in the FinTech sector (including in English) should be presented on the website of the Ministry of Economic Development. It was pointed out that the sub-page of the KNF website concerning FinTech should include relevant links to the other sub-page.

ACTIONS UNDERTAKEN:

The Ministry of Economic Development published information on its website concerning various forms of financial support for the FinTech sector[10]

[10] https://www.mr.gov.pl/strony/zadania/wsparcie-przedsiebiorczosci/e-przedsiebiorczosc/innowacje-finansowe/

11. THE USE OF CLOUD COMPUTING SERVICES IN BUSINESS

(Barrier No. 25 in Annex No. 1 – Status: removed)

In the course of the Task Force's work, representatives of the market participants pointed out that to ensure the development of financial innovations, supervised entities should be enabled to use cloud computing services as a more secure, less expensive solution, providing greater availability for customers and recipients of services.

In the opinion of the market entities, the main advantages flowing from implementation of cloud computing in the FinTech sector include in particular:

a. Financial advantages

Cloud computing makes it possible to differentiate the total cost of IT services depending on the intensity of use. It allows IT costs to be recognized as current expenses rather than capital expenditures. Cloud computing can also significantly cut the costs of licences.

b. Reliability

Providers of cloud computing services emphasize the reliability of the infrastructure of their data centres and services. In the traditional software model, the breakdown of one of the computers reduces the overall capacity of the enterprise's infrastructure. When cloud computing services are used, the tasks performed by units affected by a breakdown are immediately taken over by other machines.

c. Scalability

Scalability is a key issue for online services where it is difficult to predict the required computing power. An important advantage of cloud computing infrastructure is the network's ability to swiftly scale and use additional servers or data storage space.

In the course of the Task Force's work, it was pointed out that entities supervised by the KNF are generally allowed to use solutions based on cloud computing. The solutions must meet relevant legal requirements on outsourcing and comply with prudential regulations. In particular, cooperation with external providers of IT services is dealt with by the KNF in its Recommendation D for banks[11], Recommendation D-SKOK[12] for credit unions, and the KNF's sectoral guidelines concerning management of IT fields and security of the IT environment[13], in particular Guideline No. 10.6 on requirements related to the processing of personal data, inter alia in the cloud computing model. The KNF Office performed an in-depth analysis of the supervisory expectations with regard to supervised entities' use of solutions based on cloud computing, to work out and publish the position of the KNF Office in this respect.

ACTIONS UNDERTAKEN:

The KNF Office published a position on supervised entities' use of cloud computing solutions

[11] https://www.knf.gov.pl/knf/en/komponenty/img/Recommendation_D_44255.pdf

[12] https://www.knf.gov.pl/knf/pl/komponenty/img/Reko_SKOK_D_47953.pdf

[13] https://www.knf.gov.pl/dla_rynku/regulacje_i_praktyka/rekomendacje_i_wytyczne/wytyczne_dotyczace_zarzadzania_obszarami_IT?articleId=39987&p_id=18

12. REPLACING PAPER DOCUMENTS WITH DIGITAL EQUIVALENTS

(Barriers No. 29, 60, 61, 77 in Annex No. 1 – Status: during removal)

In the course of the Task Force's work, representatives of the market participants pointed out that a key factor contributing to the development of financial innovations in Poland is the possibility of replacing paper documents with digital equivalents. This aspect is particularly important for entities operating only in an online environment. In the course of the Task Force's work, legislative proposals were worked out to give financial institutions greater freedom to act through electronic channels.

ACTIONS UNDERTAKEN:

The CFC proposed a provision to be added to the Banking Act under which all financial market entities could use direct debit without the necessity to maintain a paper flow of documents

The KNF Office proposed legislative changes to existing acts governing the third pillar of the pension security system (EPS[14], IPA[15] and IPSA[16]) to facilitate the use of electronic documents

The CFAM proposed amendments to the Act on Individual Pension Accounts and Individual Pension Security Accounts to allow financial institutions to submit electronic tax returns to tax offices

In cooperation with the CFAM, the KNF Office prepared proposed changes to regulations in order to repeal the requirement for investment fund companies and investment funds to store paper copies of reports and allow for electronic archiving

RECOMMENDATIONS FOR FURTHER ACTIVITIES:

The Ministry of Finance should take into account the proposal to introduce a provision to the Banking Act under which all financial market entities could use direct debit without the necessity to maintain a paper flow of documents

In cooperation with the MFLSP[17] and the MJ[18], the Ministry of Digital Affairs and the Ministry of Finance should undertake initiatives to include the proposed legislative changes to current acts governing the third pillar of the pension security system (EPS, IPA and IPSA) to facilitate the use of electronic documents

The Ministry of Finance should analyze legislative proposals by the CFAM to amend the Act on Individual Pension Accounts and Individual Pension Security Accounts to allow financial institutions to submit electronic tax returns to tax offices

The Ministry of Finance should take into account the legislative proposal to repeal the requirement for investment fund companies and investment funds to store paper copies of reports and allow for electronic archiving

In cooperation with the Ministry of Finance, the Office of Competition and Consumer Protection should analyze the possibilities to relax the regime of written form in the Consumer Credit Act, provided that consumer interests are properly protected

[14] EPS – Employee Pension Scheme

[15] IPA – Individual Pension Account

[16] IPSA – Individual Pension Security Account

[17] MFLSP – Ministry of Family, Labour and Social Policy

[18] MJ – Ministry of Justice

13. LIMITED ACCESS OF FINANCIAL INSTITUTIONS TO DATA PROCESSED IN PUBLIC REGISTERS

(Barriers No. 66 and 72 in Annex No. 1 – Status: during removal)

In the course of the Task Force's work, representatives of the market participants pointed out that it would be justified to make changes to the rules for publishing data processed in public registers so that the data can be more broadly accessible and used by FinTech entities, including banks and insurance companies, to provide innovative services. Not only can the openness and digitalization of access to public data speed up trading, it can also save time and money for citizens and the state.

In the course of the Task Force's work, it was established that wider access by insurance companies to certain public databases and a different procedure for obtaining such data may facilitate business processes (among other things by speeding them up, reducing costs, enhancing the effectiveness of risk assessment, and, in consequence, reducing insurance premiums in certain cases).

With regard to the banking sector, representatives of the market participants pointed out the necessity to provide the banks with effective access to existing public databases in order to effectively identify and verify their customers in performance of their public-law obligations, inter alia for the prevention of money laundering and terrorist financing. It was also pointed out that certain information should be automatically confirmed by the Social Insurance Institution (ZUS).

Representatives of the PONBPI and the NACU noted that as in the case of banks, problems with access to existing public databases for client verification also occur in the sector of credit unions and national payment institutions, which are also obligated institutions within the meaning of AML/CFT regulations.

ACTIONS UNDERTAKEN:

The PIA proposed solutions with regard to the insurance sector's access to the following registers: PESEL[19], CEPiK[20], NHF[21], ZUS, KRUS[22], and SLI[23]

The PBA proposed solutions with regard to the banking sector's access to the following registers: RIC[24] and PESEL

[19] PESEL – Universal Electronic System for Registration of the Population

[20] CEPiK – Central Register of Vehicles and Drivers

[21] NHF – National Health Fund

[22] KRUS – Agricultural Social Insurance Fund

[23] SLI – State Labour Inspectorate

[24] RIC – Register of Identity Cards

In the course of the Task Force's work, it was communicated that the Ministry of Digital Affairs was carrying out work on implementation of a central Platform for Integration of Services and Data as a key element of the Information Architecture of the State. This tool will be responsible for maintaining a central register of services, technical integration of systems, and central monitoring and reporting of the availability of services and data disclosed by individual systems. The platform will also be a central component enabling the integration of systems of the state administration with commercial systems (B2A). The uniform approach to managing the flow of data will make it possible to reuse data stored in state registers while strictly controlling their scope. The process of preparing the platform will also involve construction of a central repository of integration architecture, which will be used to store information on all the data flows between the systems (both state and commercial).

RECOMMENDATIONS FOR FURTHER ACTIVITIES:

The PIA and the Ministry of Digital Affairs should undertake activities taking into account the demand by the insurance sector concerning access to the PESEL and CEPiK databases

In cooperation with the NHF and the MH[25], the PIA should undertake activities taking into account the demand by the insurance sector concerning access to the NHF database

In cooperation with the Social Insurance Institution and the MFLSP, the PIA should undertake activities taking into account the demand by the insurance sector concerning access to the ZUS database

In cooperation with KRUS and the MARD[26], the PIA should undertake activities taking into account the demand by the insurance sector concerning access to the KRUS database

In cooperation with the State Labour Inspectorate, the PIA should undertake activities taking into account the demand by the insurance sector concerning access to the SLI database

In cooperation with the MIA[27], the PBA, NACU and PONBPI should undertake activities taking into account the demand by the banking sector concerning access to the RIC database

The PBA, NACU, PONBPI and the Ministry of Digital Affairs should undertake activities taking into account the demand by the banking sector concerning access to the PESEL and CEPiK databases

In cooperation with the MFLSP, the PBA, NACU and the Ministry of Finance should undertake activities taking into account the demand by the banking sector to confirm PIT returns in tax offices

The PBA, NACU and the Ministry of Finance should undertake activities taking into account the demand by the banking sector concerning access to the TIN database

In cooperation with GUS[28], the PBA and NACU should undertake activities taking into account the demand by the banking sector concerning access to the BIN (REGON) database.
In cooperation with ZUS and the MFLSP, the PBA and NACU should undertake activities taking into account the demand by the banking sector concerning automatic confirmation of certain data in the ZUS database

The PBA, NACU, PONBPI and the PIA should undertake activities to consult the proposed solutions concerning access to public registers with the IGPPD in terms of compliance with rules for proper data processing

The Ministry of Digital Affairs should implement the central Platform for Integration of Services and Data

[25] MH – Ministry of Health

[26] MARD – Ministry of Agriculture and Rural Development

[27] MIA – Ministry of the Interior and Administration

[28] GUS – Central Statistical Office of Poland

14. THE LACK OF LEGAL CERTAINTY AS TO THE OPERATION OF CROWDFUNDING PLATFORMS IN POLAND

(Barrier No. 85 in Annex No. 1 – Status: during removal)

In the course of the Task Force's work, representatives of the market participants pointed out the necessity to ensure a transparent legal and regulatory environment for the development of crowdfunding platforms in Poland. It was pointed out that crowdfunding, as an alternative to credit, bonds and loans, enables financing of many innovative projects (in particular at their initial stage), which can generate profits and bring favourable effects for the economy in future.

The Task Force agreed that to undertake further activities related to the clarification of doubts in interpretation as to the application of legal provisions on crowdfunding, it was necessary to prepare detailed descriptions of typical crowdfunding models in Poland. This material was prepared by the CPI, CFC and FinTech Poland.

The Task Force found that at the current stage of development of crowdfunding in Poland, it is not justified to introduce separate regulations in this field, but it is necessary to undertake activities to enhance legal certainty among market participants under the current provisions. In particular, this refers to the risk that activities carried out by natural persons granting loans to other natural persons under crowdlending would be deemed to be economic activity, and the unclear legal and tax status of peer-to-peer lending. In this context, the Ministry of Economic Development pointed out that work is underway on a draft Business Law which includes a proposal for so-called unregistered activity. Under this draft, economic activity by a natural person whose income from this activity does not exceed 50% of the minimum monthly wage specified in the Minimum Wage Act in any month would not be treated as economic activity. During the work of the Task Force it was determined that this legislative proposal could also apply to social lending activities, in the form of crowdlending, as long as the lender's income falls within a certain limit.

ACTIONS UNDERTAKEN:

In cooperation with the CFC, CPI and FinTech Poland, the KNF Office prepared a description of identified crowdfunding models with an indication of the applicable laws (Annex No. 2)

It was also pointed out that in relation to the amendment of the Trading in Financial Instruments Act driven by the need to implement MiFID II, it is planned to amend Art. 72 of the act defining the offering of financial instruments, which is related to crowdinvesting. It was established that to enhance the legal certainty on the definition of the offering of financial instruments in light of the new provision, the KNF Office will devise, on the basis of the examples presented by the community of crowdfunding platforms, a practical position indicating which activities may be classified as the offering of financial instruments. The position would be published after entry into force of the new provisions.

In the course of the Task Force's work, proposed changes to the Public Offering Act were worked out to simplify the procedure for submitting offerings with a value of up to EUR 1 million. This change would make it possible to increase the value of investments carried out via crowdinvesting, but without imposing excessive burdens on entities seeking financing under this approach (see Barrier No. 57).

As agreed by the Task Force, an important component of the non-statutory regulations on crowdfunding platforms should include market best practices, in particular with regard to risk management. They would enable standardization of the business practices of the whole market and serve as a tool for building the image of the sector and the security of market participants. The CFC undertook to formulate such a document and invite all entities of the Polish crowdfunding market to adopt it.

RECOMMENDATIONS FOR FURTHER ACTIVITIES:

The CFC should work out market best practices with regard to the operation of crowdfunding platforms in Poland

The Ministry of Finance should take into account the legislative proposal of simplifying the procedure for submitting offerings with a value of up to EUR 1 million

The Ministry of Economic Development should finalize the work on the Business Law in terms of implementing so-called unregistered economic activity, which could cover social lending activities

Conclusion

The undertaken initiative will serve as an important impetus for the construction of a centre of financial innovations in Poland which will have a significant position both in Europe and globally

This Report was prepared as a result of a Polish initiative for development of financial innovations (FinTech), under which a special Task Force was appointed bringing together a wide range of public institutions (regulatory and supervisory authorities) and representatives of the market (both supervised and non-supervised). The objective of the Task Force was to identify legal, regulatory and supervisory barriers to the development of financial innovations in Poland and to propose solutions and activities for respective bodies and entities to remove or limit the identified barriers.

As the coordinator of the activities of the Task Force, the KNF Office would like to express its gratitude to all the institutions and their representatives who participated in the project and made a valuable contribution to the preparation of this Report.

Supporting the growth of the FinTech sector is an ongoing process, and so it is hoped that the initiative undertaken will serve as an important impetus for the construction of a centre of financial innovations in Poland which will have a significant psition both in Europe and globally.

Annex No. 1

List of identified barriers to the development of financial innovations (FinTech) in Poland, including actions taken and recommendations for further activities

Systemic Sub-Group

No.	Name and description of barrier (the entity raising it)	Arrangements/actions taken/recommendations	Status of barrier[1] (removed, during removal, not removed, unjustified, beyond the scope of work)
1	**SUPPORTING FINANCIAL INNOVATIONS AS ONE OF THE OBJECTIVES OF THE SUPERVISORY AUTHORITY (FINTECH POLAND)** Supporting financial innovations is not one of the objectives of the financial market supervisory authority (Art. 2 of the Financial Market Supervision Act). Nor has the KNF been expressly charged with such a task (Art. 4(1)(3) includes only a general provision on undertaking activities aimed at developing the financial market and its competitiveness). It is justified to analyze the objectives of the supervisory authority over the financial market and the tasks of the KNF in terms of supporting the development of the market of financial innovations while ensuring the implementation of the remaining supervisory objectives.	The Task Force found it justified to formulate an additional task for the supervisory authority in the Financial Market Supervision Act with regard to support for the development of financial innovations, while taking into account the following arguments: a. A positive signal for market participants in Poland and beyond its borders (a significant image aspect in terms of building a regional FinTech Hub in Poland); b. Ensuring sustainability of the activities of the supervisory authority for the development of financial innovations; c. The possibility to gain appropriate human resources in order to build organizational solutions of the KNF dedicated to the FinTech field (see also Barrier No. 4 of the Systemic Sub-Group). **ACTIONS UNDERTAKEN:** **The Ministry of Finance proposed a change to the Financial Market Supervision Act to extend the tasks of the KNF to include supporting the development of financial innovations.** After Art. 4(1)(3) of the Financial Market Supervision Act of 21 July 2006, point 3a should be added as follows: *3a) undertaking activities aimed at supporting the development of innovativeness of the financial market;* This proposal was included in the draft Act Amending the Financial Market Supervision Act and Certain Other Acts published on the website of the GLC[2] on 12 July 2017. **RECOMMENDATIONS FOR FURTHER ACTIVITIES:** **The Ministry of Finance should finalize work on the draft Act Amending the Financial Market Supervision Act and Certain Other Acts including extension of the tasks of the KNF to include supporting the development of financial innovations**	During removal

[1] The statuses of the identified barriers are defined as follows: Removed – a barrier has been removed completely, no recommendations for further activities; During removal – certain activities have already been undertaken and/or recommendations for further activities have been formulated; Not removed – a barrier is related to the FinTech field, but no acceptable solution has been worked out in the course of the Task Force's activities; Unjustified – a barrier does not exist; Beyond the scope of work – a barrier does not refer to the FinTech field.
[2] https://legislacja.rcl.gov.pl/projekt/12300403

2

ISSUANCE BY THE SUPERVISORY AUTHORITY OF BINDING POSITIONS, THE LACK OF LEGAL CERTAINTY AS TO FINANCIAL INNOVATIONS (FINTECH POLAND, PONBPI, CFAM, NACB)

It would be justified to authorize the KNF to issue binding interpretations (e.g. as tax interpretations are issued), which would facilitate the development of innovative products and services. Entities of the FinTech sector need to be informed on whether a KNF permit or consent is required to carry out a particular activity. The range of legal provisions regulating the operation of the financial services market and their complex nature very often leads to a situation where, in particular, small entities not employing external advisers do not undertake innovative ventures because they are uncertain of their compliance with the expectations of the regulatory and supervisory authorities. Additionally, it would be justified to introduce an obligation for the supervisory authority to issue binding positions in light of changes in the legal environment and provide a central place for their publication. It should be pointed out at the same time that there is a need to promote the authority's positions on issues common to a larger number of entities.

As established by the Task Force, the procedure for issuing tax interpretations cannot be accepted as a model for the supervisory authority to issue binding positions. With regard to directly applicable EU provisions, statutory provisions and regulations, the KNF is not authorized to issue binding interpretations, but can only present its own position. Nevertheless, it was agreed that even non-binding positions of the supervisory authority may exert a favourable impact on enhanced legal certainty among market participants, in particular in the FinTech sector. Poland has a chance to become a leading centre of financial innovations on a regional scale and it is necessary to provide for solutions that will mitigate the barrier of the lack of legal certainty, e.g. by ongoing and consistent publication of the supervisory authority's positions on the KNF website.

ACTIONS UNDERTAKEN:

The KNF Office reviewed the procedure for publishing opinions/positions of the supervisory authority on its website with regard to individual sectors of the financial market in order to standardize the practice in use.

Since 3 July 2017, positions of the KNF and the KNF Office addressed to individual sectors of the financial market have been published on the official website of the KNF in the form of announcements.[3]

The KNF Office launched a sub-page of the KNF website which includes information on different types of innovative financial services that could be helpful in classifying particular activities in terms of the need to obtain a licence, including a list of positions of the supervisory authority, binding regulations, and frequently asked questions and answers (FAQ).

The sub-page of the KNF on the FinTech sector (https://knf.gov.pl/dla_rynku/fin_tech) was launched on 23 June 2017.

The KNF Office analyzed the issue of changing the approach to inquiries by non-regulated entities (startups), including the risk of an excessive increase in the number of inquiries

Since 3 July 2017, the KNF Office has applied a new approach with regard to answering inquiries by non-supervised entities which intend to enter the financial market, which is particularly dependent on obtaining a licence, consent or approval by the KNF. In this situation, the supervisory authority will provide complete answers, including an important condition that in giving an answer it will specify every time that the answer is based on the concrete factual state described by the supervised entity, and the evaluation presented by the KNF does not exclude the possibility for other bodies of public authority to present their positions.

RECOMMENDATIONS FOR FURTHER ACTIVITIES:

The KNF Office should establish an effective channel of communication (including creating a contact list) between the KNF Office and other institutions (e.g. the MF, NBP, OCCP, IGPPD, and the Financial Ombudsman) to cooperate in the field of the development of financial innovations.

During removal

[3] Announcement of the KNF of 3 July 2017 (https://www.knf.gov.pl/knf/pl/komponenty/img/Komunikat_publikowanie_stanowisk_UKNF_3_07_2017_57323.pdf)

3

THE NEED TO CONDUCT AN EFFECTIVE DIALOGUE WITH THE SUPERVISORY AUTHORITY
(FINTECH POLAND, CPI, CFAM, CFC)

In the light of the dynamic development of financial innovations, the supervisory authority should conduct a more effective dialogue with market participants. According to those surveyed, a supervisory barrier which should be changed is the lack of a system-based solution under which representatives of the supervisory authority could provide assistance in establishing the proper legal classification of the activity carried out. It seems that the KNF should undertake appropriate organizational changes to support financial innovations in an effective way. As foreign examples demonstrate, special units (departments) are often created to deal exclusively with matters related to FinTech (to cooperate with companies in the sector, etc). At the moment, startups (FinTech) face difficulties when contacting the supervisory authority. There is no accessible, practical and clear information on how to obtain an appropriate licence (or the lack of such requirement). There is insufficient market knowledge on the regulatory authority's approach to various matters related to financial innovation. Nor is there proper communication in English which would be very helpful for foreign entities wishing to enter the Polish market. Despite high technical competences, sometimes innovative new entities of the financial sector (FinTech) do not possess, at the initial stage, appropriate legal or organizational competences as to how a licence may be obtained, the regulatory authorities may be contacted, etc. To ensure that financial innovations are actually implemented in Poland, the regulatory authorities should demonstrate greater openness to entities and facilitate their completion of the relevant procedures so that the development of innovations is not hindered by procedural matters. The financial supervisory authority should also inform the market as openly as possible about its position on the application of financial regulations, even if its position is not legally binding. It is also necessary to make email communication the standard form for communicating with entities applying for a licence or already supervised.

In the opinion of the Task Force, the stability and transparency of the regulatory environment is of key importance for the development of innovative financial services. It should be emphasized that a favourable regulatory and legal environment and an adequate level of legal certainty in this respect are important for the position of Poland as a country aspiring to become a centre of financial innovation. However, it should be pointed out that the implementation of an effective policy for supporting the development of the FinTech sector requires, in particular, the KNF Office to introduce appropriate organizational and process-based solutions. In order to carry out operational activities in the FinTech sector effectively and to develop supervisory competences with regard to modern financial technologies, an organizational unit dedicated to the FinTech sector should be established in the structure of the KNF Office and appropriate personnel should be appointed. Based on observations of foreign supervisory authorities, such an organizational unit is necessary to ensure that the supervisory authority can react to inquiries from entities in the FinTech sector (supervised or non-supervised) swiftly and effectively, and undertake corrective measures to support the development of financial innovations.

ACTIONS UNDERTAKEN:

The KNF Office launched a sub-page of the KNF website which includes information on different types of innovative financial services that could be helpful in classifying particular activities in terms of the need to obtain a licence, including a list of positions of the supervisory authority, binding regulations, and frequently asked questions and answers (FAQ).

The sub-page of the KNF on the FinTech sector (https://knf.gov.pl/dla_rynku/fin_tech) was launched on 23 June 2017.

The KNF Office reviewed the procedure for publishing opinions/positions of the supervisory authority on its website with regard to individual sectors of the financial market in order to standardize the practice in use.

Since 3 July 2017, the positions of the KNF and the KNF Office addressed to individual sectors of the financial market have been published on the official website of the KNF in the form of announcements.

The KNF Office established in its structure an organizational unit for the development of financial innovations (FinTech).

On 21 June 2017, the KNF Office made a strategic decision to appoint an organizational unit for FinTech matters. The main tasks of this unit will include coordination of matters dealt with by the KNF Office with regard to financial innovations, including the preparation or coordination of the preparation of draft positions for entities of the FinTech sector, conducting dialogue with market participants of the FinTech sector to exchange views, opinions and doubts as to a particular product or service of the sector of financial innovations, developing a sub-page of the KNF website on financial innovations (FinTech), providing substantive support to departments of the KNF Office with regard to the FinTech sector, cooperation with other institutions and bodies of the state administration and foreign supervisory authorities with regard to FinTech, monitoring of changes to legal provisions and other regulations related to the sector of financial innovations, and performing analyses with regard to FinTech solutions implemented in Poland and abroad.

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	It would be justified to work out a steady form of cooperation by the supervisory authority with the financial sector, organize joint conferences, workshops and regular meetings to identify mutual doubts and expectations. Detailed manuals, instructions and common interpretations for the whole financial market and individual types of market entities should also be published on the KNF website (e.g. as the British supervisory authority does). It would also be useful to publish explanations given to individual entities (after redacting their identifying details) on the KNF website—a FAQ section. It should be pointed out that the consistent interpretation of provisions and the positions of the supervisory authority are disseminated to a limited extent (publication of guidelines, seminars at the Centre of Education for Market Participants). As a result, many provisions are interpreted differently (e.g. the provisions on outsourcing), which creates unjustified differences in the method and operational costs of individual entities (due to differences in interpretation of the provisions and the inconsistent scope of information supervised entities receive from the KNF).		
4	**ENSURING A FAVOURABLE LEGAL AND ORGANIZATIONAL ENVIRONMENT TO TEST INNOVATIVE FINANCIAL SERVICES (CREATING A SO--CALLED REGULATORY SANDBOX) (FINTECH POLAND, CFC)** It is necessary to create a secure legal and organizational environment in which businesses are able to create, offer and test new financial services while facing limited regulatory requirements. Because the most innovative entities are mainly new companies (startups) at the preliminary stage of their activity, they face difficulties in fulfilling regulatory requirements (licensing, capital, organizational, related to supervision costs, etc). These barriers may hinder innovative financial solutions from being placed on the market (entry barriers). Thus, these barriers have an overall overall adverse impact on the development	On the basis of the information published on the websites of foreign supervisory authorities and completed study visits, the KNF Office analyzed the initiatives taken up by foreign supervisory authorities for the development of financial innovations. The most important of these include: Innovation Hub – an information and training procedure under which a special team of the supervisory authority launches informational initiatives in the regulatory and legal field for entities of the FinTech sector (contact point for market participants). Under this solution, the supervisory authority maintains correspondence and holds meetings with entities of the FinTech sector, informing them about regulations as well as facilitating the identification of potential sources of regulatory risk. It should be emphasized at the same time that the exchange of information is two-way in the Innovation Hub, which allows representatives of the supervisory authority to trace innovative solutions and draw conclusions to be used for devising supervisory policy. Regulatory Sandbox – a more advanced form to support the FinTech sector which consists of ensuring a "safe space" where market participants may test their innovative solutions, products and financial services within a scope that is limited in time and by subject. In this context, it should be emphasized that the regulatory sandbox usually constitutes a further stage of the particular supervisory authority's support for the development of the FinTech sector, due to its more advanced and often highly formalized nature. An innovation hub is usually built first within the structure	During removal

	of the Polish market of financial innovations (FinTech) and may largely be responsible for Poland not becoming a regional centre (hub) of financial innovations despite its potential to do so (which should be a development objective for Poland). It is justified to introduce regulatory changes including a dedicated procedure for proceedings by the supervisory authority allowing businesses to be treated flexibly by waiving some requirements, conducting direct dialogue, and providing support to first test and optimize and then offer a new and innovative solution on the market. It would also be necessary to introduce the institution of a "mentor" for newly founded companies (or those applying for a licence) who will guide the entity, facilitating the process of obtaining a licence and entering the market.	of the supervisory authority (such an approach was adopted by the supervisory authorities in for example the United Kingdom (FCA) and the Netherlands (AFM), as well as outside Europe (e.g. in Singapore (MAS), Hong Kong (HKMA), and Australia (ASIC)). The Task Force found it justified for the innovation hub concept to be implemented in the KNF Office first, by the organizational unit for the development of financial innovations (FinTech). Furthermore, it was agreed that at a later stage of work creation of a regulatory sandbox in Poland should be considered, because of its potentially important role in supporting the development of financial innovation. It was highlighted that not only startups could participate in the regulatory sandbox, but also large financial institutions with established market positions which are looking for new business models based on modern technologies. It should also be pointed out that under the INFOSTRATEG Programme, the Ministry of Digital Affairs is preparing a research programme dedicated to emerging transactional and financial technologies. The ministry intends to use the programme to support the establishment of an ecosystem of transactional innovations in Poland, allocating funds to the building of safe testing environments in which transactional and financial innovations will be tested (Blockchain/DLT). This virtual sandbox, i.e. an information platform that will serve to aggregate large datasets and programming interfaces (APIs) for startups, large companies from the FinTech sector, and banks, will be a source of hard data that may potentially be used by the KNF Office in the formulation of recommendations and guidelines. The programming interfaces in the virtual sandbox will be a point of contact for market participants interested in financial innovations. **RECOMMENDATIONS FOR FURTHER ACTIVITIES:** **The KNF Office should implement the Innovation Hub concept through a dedicated organizational unit for the development of financial innovations (FinTech).** **The Ministry of Digital Affairs should implement a research programme dedicated to emerging transactional and financial technologies under the INFOSTRATEG Programme.**	
5	**NATIONAL REGULATIONS MORE EXCESSIVE THAN EU LAW (SO-CALLED GOLD-PLATING)** **(FINTECH POLAND)** To ensure appropriate conditions for the development of financial innovations, it is necessary to eliminate so-called gold-plating, i.e. the practice of implementing national solutions extending beyond the law adopted by the European Union.	As established by the Task Force, gold-plating is understood as supplementation of implemented provisions of EU law by additional national provisions, but this term should not be equated with the method in which Poland implements selected national options. **ACTIONS UNDERTAKEN:** **The Task Force analyzed examples of gold-plating of Poland, as indicated by market entities, which hinder the development of financial innovations.** Legal provisions that may be deemed to constitute gold-plating were included in selected barriers to the development of financial innovations the Task Force worked on (see Barriers No. 11, 12, 34, 41, and 44). It was agreed that certain identified legal barriers could be eliminated in the course of ongoing legislative processes, with the participation of relevant regulatory bodies. **RECOMMENDATIONS FOR FURTHER ACTIVITIES:** **Performing the activities mentioned in Barriers No. 11, 12, 34, 41 and 44**	**During removal**

6

EXCESSIVE LENGTH AND FORMALITY OF PROCEEDINGS BY THE SUPERVISORY AUTHORITY (FINTECH POLAND, PONBPI)

One of the main regulatory barriers to the development of the FinTech sector in Poland is the length and complexity of the proceedings for obtaining a permit from the KNF, in particular for rendering payment services. Such proceedings usually take more than 9 months, while they can be completed within 3 months in other member states. It is necessary to amend the procedure before the KNF to shorten the deadlines and reduce the volume of correspondence. It is desirable to introduce concrete criteria for extending proceedings and to specify in more detail the provisions for completing the application. For example, it would be desirable to consider an obligation for the KNF to include in the first letter addressed to the applicant—to be sent within a maximum of 2 months—all matters the supervisory authority finds necessary to supplement in the application and to abandon the current practice of including a reservation that the requests addressed to the applicant are not exhaustive.

Furthermore, it should be pointed out that it is not possible to predict the end time and result of the administrative proceeding. The licensing proceedings of the supervisory authority are highly formalized. In practice, small entities without significant human and financial resources are not able to receive consent by the supervisory authority to start their activity, which often drives these entities to migrate to other countries. As far as the British financial market supervisory authority is concerned, entities are even encouraged to apply for a permit to operate as a payment service provider, while the supervisory authority, to meet market expectations, publishes a precise description of the requirements to be fulfilled by applicants, including a description of the process of obtaining consent.

As established by the Task Force, an important factor hindering the possibility of expediting or deformalizing the proceedings conducted by the KNF is the procedure specified in the Administrative Procedure Code. Nevertheless, it was pointed out that the KNF Office should specify precise requirements (guidelines) for applicants for licences, including a description of the whole process of obtaining consent. It was established that appropriate links to the devised descriptions would be included on the sub-page of the KNF website on financial innovations (FinTech).

In the course of the Task Force's work, the draft amendment of the Payment Services Act (as part of the implementation of PSD2) was extended to include provisions facilitating the operation of small payment institutions (SPIs) in Poland. Operation in the form of an SPI will be subject to registration by the KNF upon fulfilment of certain requirements which are much reduced compared to those for national payment institutions.

Based on its existing supervisory experience, the KNF Office pointed out that the proposal to exclude the possibility to summon a party multiple times to supplement its application is unjustified for two reasons:

- If (as is often the case) the information provided by the party is insufficient, the inability to issue a follow-up request would require the KNF to issue a negative decision on the application, when it might have been approved if appropriately supplemented.
- With regard to innovative solutions, only the supplementary information may enable risks requiring clarification to be identified, which implies the necessity to supplement the information again.

ACTIONS UNDERTAKEN:

The KNF Office devised detailed descriptions of the licensing and registration processes (including relevant links to the prepared description on the sub-page of the KNF website devoted to FinTech).

The Ministry of Finance introduced to the draft amendment of the Payment Services Act (as part of the implementation of PSD2) provisions facilitating the operation of small payment institutions (SPIs) in Poland, including a simplified registration procedure.

On 10 May 2017, the draft amendment of the Payment Services Act introducing so-called small payment institutions was published on the website of the GLC. This proposal was upheld in the following version of the draft amendment published on 18 August 2017.

RECOMMENDATIONS FOR FURTHER ACTIVITIES:

The Ministry of Finance should finalize its work on the amendment of the Payment Services Act (as part of the implementation of PSD2) to introduce provisions facilitating the operation of small payment institutions in Poland, including a simplified licensing procedure.

During removal

7	**EXCESSIVELY STRICT POSITIONS OF THE SUPERVISORY AUTHORITY ON FINANCIAL INNOVATIONS (FINTECH POLAND)** An important barrier to the development of innovations may be a situation where a provision of EU law has been implemented correctly but the interpretation by the supervisory authority results in a material modification determining the way a product functions (e.g. prepaid cards or electronic money). It would be justified to review the positions of the supervisory authority claiming that the function of stimulating the market and enhancing its competitiveness is secondary to other objectives of the supervisory authority, in particular ensuring the security of the system.	In the course of the Task Force's work, it was pointed out that with regard to any kind of financial innovations the security of the solutions on offer is of fundamental importance. Therefore, it is very important that the development of the financial market in technological terms also be accompanied by the development of solutions ensuring adequate security of the services on offer, so as not to undermine customers' confidence in the financial market. The KNF recognizes the need to develop innovations; nevertheless, the security of the financial system is an important factor the supervisory authority takes into account when formulating its positions. **ACTIONS UNDERTAKEN:** **The Ministry of Finance proposed a change to the Financial Market Supervision Act to extend the tasks of the KNF to include supporting the development of financial innovations (see Barrier No. 1).** **RECOMMENDATIONS FOR FURTHER ACTIVITIES:** **The Ministry of Finance should finalize its work on the draft Act Amending the Financial Market Supervision Act and Certain Other Acts including the extension of the tasks of the KNF to include supporting the development of financial innovations.**	During removal
8	**SUPERVISION COSTS FOR STARTUPS (FINTECH POLAND)** There are no detailed rules for financing the supervision of startups creating a temporary preferential system for innovative entities. The Polish system of financing the supervisory authority is not competitive with the solutions adopted by other member states and results in the migration of Polish financial institutions to other jurisdictions and their operation in Poland through a branch office or on a cross-border basis. It would be justified to introduce other mechanisms for financing the supervision costs for new, small and innovative businesses.	In the course of the Task Force's work, it was pointed out that the Payment Services Act was amended recently and the supervision fees paid by national payment institutions were decreased significantly. In other sectors of the market, barriers to the development of financial innovations due to high supervision costs are not noticeable, as the fees are generally dependent on the scale of operation. While taking into account the mechanism of financing supervision costs by supervised entities, it does not seem to be possible to introduce preferences for certain entities only due to their innovativeness. Such preferences would be at the cost of other supervised entities which would de facto finance the cost of the supervision over FinTech. An additional difficulty would be how to determine the criteria for granting such preferences. It was agreed that it would be justified to abandon the obligation to pay stamp duty on entries in the KNF register for providers of payment services under regulated economic activity. **RECOMMENDATIONS FOR FURTHER ACTIVITIES:** **The Ministry of Finance should analyze the possibility of abandoning the obligation to pay stamp duty on entries in the KNF register with regard to providers of payment services under regulated economic activity.**	During removal
9	**THE PRINCIPLE OF PROPORTIONALITY (FINTECH POLAND, CPI, NACB)** Except for a limited number of exceptions, all entities intending to start an activity supervised by the Polish Financial Supervision Authority are now obliged to fulfil strict legal requirements (personal, capital, and organizational),	As established by the Task Force, the principle of proportionality may be used to the extent allowed by the respective provisions (including EU law) while maintaining the minimum requirements ensuring the security of the entities' operations and the protection of their customers. In the course of the Task Force's work, the draft amendment of the Payment Services Act (as part of the implementation of PSD2) was extended to include provisions facilitating the operation of small payment institutions (SPIs) in Poland. Operation in the form of an SPI will have to be registered by the KNF upon	During removal

irrespective of their scale of operation. Such restrictions may violate the principle of proportionality, which requires the least burdensome restriction needed to achieve a particular objective, depending on the scale of the entity's operation and the risk related to the activity. The regulatory requirements are a significant barrier faced by innovative businesses of the FinTech sector, which often have incomparably smaller resources than well-established entities of the financial sector. It would be justified to introduce a "regulatory fast-track" for startups of the FinTech sector.

The limited application of the principle of proportionality in the design and implementation of the solutions regulating the operation of entities of the financial sector leads to a situation in which small entities in particular use most of their resources and means to adapt to changing (increasing) obligatory requirements, which hinders them from undertaking activities which are financial innovations.

Although it is allowed by the PSD (under national options), the Payment Services Act does not provide for wide exemptions (in terms of the licensing obligation) for providers operating on a limited scale (apart from entities offering money transfers in the territory of Poland), which means that similar requirements are applied to both entities with a well-established position on the market rendering services to a wide range of recipients, and new entities about to enter the market, which do not generate high risk and whose products are often based on solutions used by current market participants.

It would be desirable to introduce regulations concerning the obligation for the public administration to apply the principle of proportionality to market participants. If this principle were applied, adequate means would be chosen for the planned objective; thus the Polish Financial Supervision Authority could apply softened requirements to entities carrying carry out innovative activity on a small scale.

fulfilling certain requirements, which are significantly limited however compared with the requirements for national payment institutions.

Additionally, it should be pointed out that an amendment of the Administrative Procedure Code entered into force on 1 June 2017, including the principle of proportionality as a general rule in the code. Its direct formulation in the code enhances the awareness of the parties and decreases the risk of violations. In accordance with the principle of proportionality, administrative bodies should take only actions that are proportionate to the objective of the proceeding. When performing their activities, they should choose the measures that are the least burdensome for the parties.

ACTIONS UNDERTAKEN:

The Ministry of Finance introduced to the draft amendment of the Payment Services Act (as part of the implementation of PSD2) provisions facilitating the operation of small payment institutions (SPIs) in Poland, including a simplified registration procedure.

On 10 May 2017, the draft amendment of the Payment Services Act introducing small payment institutions was published on the website of the GLC. This proposal was upheld in the following version of the draft amendment published on 18 August 2017.

RECOMMENDATIONS FOR FURTHER ACTIVITIES:

The Ministry of Finance should finalize its work on the amendment of the Payment Services Act (as part of the implementation of PSD2) to introduce provisions facilitating the operation of small payment institutions in Poland, including a simplified licensing procedure.

10	**EXCESSIVE AND BURDENSOME REPORTING REQUIREMENTS (FINTECH POLAND, NACB)** Excessive reporting requirements constitute a significant barrier to the development of the FinTech sector. Although it generates quite significant costs, preparing certain information does not pose a major problem for large entities. However, for micro-enterprises, this is a major burden in terms of time and finances. There is a request to review the regulations in terms of the duplication of duties to report to various bodies of the administration and to eliminate reporting duties with regard to data already processed by public authorities. The volume of information financial institutions are obliged to deliver to individual offices is a barrier particularly for small entities to undertake innovative ventures, not only due to the fear of increasing labour intensity for preparation of certain reports, but also due to limited resources (systems, HR etc) enabling performance of such duties. It would be desirable to adjust the reporting requirements to the scale of operation of individual financial institutions in each case.	It was established that this barrier could be significantly limited through more extensive use of regulatory technologies (RegTech) in Poland. It was emphasized that in addition to a huge potential for cost saving, an advantage of RegTech solutions is that they can be quickly adapted to the changing regulatory environment. RegTech solutions can significantly support the collection and reporting of data to fulfil regulatory requirements by means of such technologies as Big Data, advanced analytics, process automation, machine learning, and data visualization. In the course of the Task Force's work, on 31 May 2017 the FinTech Poland Foundation published a report titled "RegTech: The significance of regulatory innovations for the financial sector and the state", which was aimed not only at defining and improving the understanding of the term "RegTech", but also placing it in a broader market and technological context. Of key importance was understanding the needs addressed by the phenomenon, as well as specifying the connection between FinTech and RegTech, a term which has become very popular in recent years. The report focuses not only on an analysis of regulatory technologies, market needs, and advantages that may be derived by financial institutions from RegTech solutions, but also emphasizes the role of the state in the process. To this end, the report reviews the approaches of the regulatory and supervisory authorities to RegTech in selected countries. Furthermore, the authors of the report used a set of recommendations and strategic scenarios to present proposals for Polish lawmakers and the national supervisory authority with regard to directions for the development of RegTech in Poland. **RECOMMENDATIONS FOR FURTHER ACTIVITIES:** **Supervisory authorities (in particular the KNF, NBP, the Bank Guarantee Fund, and the Inspector General of Financial Information) should consider the possibilities for optimizing the collection of reporting based on proposals of innovative RegTech solutions indicated by market participants.**	During removal
11	**THE INABILITY TO LIMIT THE LIABILITY OF A SERVICE PROVIDER TO THE PRINCIPAL (BANK, INVESTMENT FIRM, CREDIT UNION, OR PAYMENT INSTITUTION) (FINTECH POLAND, CPI, CBH)** With regard to the use of outsourcing in banks, credit unions, investment firms and payment institutions, Polish law does not provide for a possibility to limit the liability of the service provider to the principal for any injury to customers due to non-performance or improper performance of the contract.	In the course of the Task Force's work, the KNF Office performed an analysis of the provisions on outsourcing applied in supervised sectors of the financial market, to evaluate the provisions on limitation of the service provider's liability to the principal (bank, investment firm, credit union, or payment institution). As a result of the analysis, the KNF Office made a strategic decision to take measures aimed at amending these provisions. **ACTIONS UNDERTAKEN:** **The KNF Office devised a proposal to amend Art. 81c of the Trading in Financial Instruments Act (as part of the implementation of MiFID II) referring to the issue of limitation of the service provider's liability to the investment firm:** *Art. 81c. 1. The investment firm shall take into account the risk related to the contracting of activities in the risk management system, including those resulting from the non-performance or improper performance of a contract referred to in Art. 81a(1), in a way which covers activities related to identification, estimation, control, prevention, monitoring and reporting of risk in this respect.*	During removal

It is requested to repeal these provisions concerning the inability to limit the liability of the service provider to the principal due to the following arguments:

1) There are no analogous regulations in other European countries and elsewhere in the world.
2) The possibilities to cooperate with service providers are limited.
3) This is a barrier to the development of financial innovations (FinTech).
4) It is not possible to enhance the effectiveness, quality and security of services.
5) It is necessary to contract small providers of IT services which accept strict provisions on outsourcing.
6) It is not possible to reduce operating costs and equalize the competitive position.
7) There are limited possibilities to optimize the implementation of legal requirements through the use of outsourced IT services.

2. The liability of an undertaking or foreign undertaking to the investment firm for any injuries caused to customers due to the non-performance or improper performance of a contract mentioned in Art. 81a(1) cannot be excluded.

3. If a contract mentioned in Art. 81a(1) is concluded governed by foreign law, the investment firm shall ensure that it contains provisions corresponding to Art. 473 §2, Art. 474, and Art. 483 §2 of the Civil Code.

4. The liability of the investment firm for any injuries which the undertaking or foreign undertaking may cause to customers due to the non-performance or improper performance of a contract referred to in Art. 81a(1) cannot be excluded or limited.

5. Before concluding a contract referred to in Art. 81a(2), the investment firm shall prepare a risk management plan, taking into account in particular:

1) the procedure for selecting the undertaking or foreign undertaking to which it intends to contract the activities,

2) the nature and scope of activities and the period for performance of services by the undertaking or foreign undertaking and all its stages,

3) threats that may generate costs in relation to the payment of damages for claims raised by customers or third parties for injuries caused by non-performance or improper performance of the contract referred to in Art. 81a(2) by the undertaking or foreign undertaking to the extent it would not bear any liability.

6. The investment firm shall introduce adequate and effective solutions to secure the payment of potential costs mentioned in par. 5(3), in particular by:

1) including in the contract mentioned in Art. 81a(2) provisions on the full liability of the undertaking or foreign undertaking for the costs,

2) concluding an adequate contract for civil liability insurance, insurance guarantee or bank guarantee under which the investment firm has the right to receive compensation in relation to the costs, or

3) holding sufficient own funds for covering the costs.

RECOMMENDATIONS FOR FURTHER ACTIVITIES:

The Ministry of Finance should take into account the proposed amendment of the Trading in Financial Instruments Act to allow for limiting the service provider's liability to the investment firm for any injury caused to customers due to non-performance or improper performance of the contract.

As in case of the Trading in Financial Instruments Act, the Ministry of Finance should introduce amendments to the Banking Act, the Act on Credit Unions and the Payment Services Act to allow for limiting the service provider's liability to the bank, credit union, or payment institution for any injury caused to customers due to non-performance or improper performance of the contract.

12

LIMITED POSSIBILITIES FOR BANKS TO SUB-OUTSOURCE (SUBCONTRACT OUTSOURCING ACTIVITIES TO BE PERFORMED BY A SERVICE PROVIDER) (FINTECH POLAND, CPI)

As far as the banking sector is concerned, the Banking Act permits the use of outsourcing only to the second level (contractor → subcontractor).

Introduction of a ban on further sub-outsourcing in the banking sector may make it much harder to use outsourcing as such, where suppliers, particularly of IT services, use further subcontractors to a large extent. This is particularly noticeable in the case of cloud computing services, where the resources stored in the cloud environment are controlled or even owned by an entity other than the supplier.

The main advantages of the implementation of cloud computing in the banking sector comprise:

1. Financial advantages

Cloud computing makes it possible to differentiate the total cost of the IT services depending on the intensity of use (payment for each use of the application). It allows IT costs to be recognized as current expenses rather than capital expenditures. Cloud computing can also significantly cut the costs of licences.

2. Reliability

Providers of cloud computing services emphasize the reliability of the infrastructure of their data centres and services. In the traditional software model, the breakdown of one of the computers reduces the overall capacity of the enterprise's infrastructure. When cloud computing services are used, the tasks performed by units affected by a breakdown are immediately taken over by other machines.

3. Scalability

Scalability is a key issue for online services where it is difficult to predict the required computing power. An important advantage of cloud computing infrastructure is the network's ability to swiftly scale and use additional servers or data storage space.

As established by the Task Force, introduction of provisions allowing banks to outsource their activities on further levels would have a favourable impact on the digitalization of the Polish banking sector, particularly in using cloud computing solutions. The admission of multilevel bank outsourcing would imply the application of the same provisions as in the case of the two admitted levels (in particular, it would be necessary to ensure the possibility of exercising effective supervision over further subcontractors). Additionally, the bank would have to approve each level of such outsourcing and any changes in this respect.

RECOMMENDATIONS FOR FURTHER ACTIVITIES:

The Ministry of Finance should introduce provisions allowing banks, insurance companies and credit unions to outsource their activities on further levels (while considering allowing this possibility exclusively in the IT field).

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13	**THE LACK OF A STRATEGY FOR ACTIONS SUPPORTING THE DEVELOPMENT OF FINANCIAL INNOVATIONS (FINTECH) IN POLAND (FINTECH POLAND, CPI)** Unlike many other countries, Poland does not have a coherent strategy for supporting the FinTech market. Poland's competitive position is thus undermined. It is necessary to set out priority activities in the FinTech sector, recognize the advantages of the Polish economy (e.g. the strong IT sector) and to create system-based solutions to support the implementation of the strategy.	In the course of the Task Force's work, it was agreed that FinTech Poland would prepare a report titled "Poland as a FinTech Hub". The work on the report will include preparation of an analytical and research section concerning global trends in the construction of FinTech hubs, including the role of the state and supervisory authorities, as well as methods for engaging the market itself. This research will serve as a basis for formulating recommendations for further activities, in particular in the fields in which Poland has a chance to specialize as a FinTech Hub for Central & Eastern Europe. **RECOMMENDATIONS FOR FURTHER ACTIVITIES:** **FinTech Poland should prepare and publish a report titled "Poland as a FinTech Hub".** **The Ministry of Economic Development should prepare a strategy for supporting the development of financial innovations (FinTech) in Poland.**	During removal
14	**THE LACK OF FINANCIAL SUPPORT FOR THE DEVELOPMENT OF FINANCIAL INNOVATIONS (CPI, PIA)** Businesses operating in the field of financial innovations can rarely count on support from public funds. It is necessary to change the systems of financial support provided by such institutions as the Polish Agency for Enterprise Development and the National Centre for Research and Development, e.g. through the introduction of dedicated programmes. There is a need to regulate the support by state institutions and bodies for business incubators in a structured way. Additionally, it would be justified to create a central place to present information on various forms of financial support for innovative entities.	In the course of the Task Force's work, it was pointed out that there are various programmes in Poland to support the development of financial innovations (e.g. Start in Poland, Starter, and Scale UP) and this information should be presented in a central place. The Task Force established that information on different forms of financial support for entities in the FinTech sector (including in English) should be presented on the website of the Ministry of Economic Development. It was pointed out that the sub-page of the KNF website concerning FinTech should include relevant links to the other sub-page. **ACTIONS UNDERTAKEN:** **The Ministry of Economic Development published information on its website concerning various forms of financial support for the FinTech sector[4]**	Removed
15	**TAX OBSTACLES TO THE DEVELOPMENT OF FINANCIAL INNOVATIONS (PIA)** There are numerous tax obstacles to the development of financial innovations in Poland. It would be justified to amend the law or the operational practices of the public administration.	In the course of the Task Force's work it was agreed that the PIA would identify tax provisions which create obstacles to the development of financial innovations. **ACTIONS UNDERTAKEN:** **The PIA listed examples of imprecise provisions of the Corporate Income Tax Act of 15 February 1992.** Example 1: There are currently many interpretation problems with regard to the application of the R&D allowance. There is no uniform practice of the tax authorities. In particular, the problems refer to the rules for deducting the personnel costs of R&D activity. Above all, it is not clear what "employment in order to carry out R&D activity" means, there is no precise rule for establishing establishing the time an employee devotes to R&D activity, and there is no method for calculating the potential proportion of personnel costs related to R&D activity.	During removal

[4] https://www.mr.gov.pl/strony/zadania/wsparcie-przedsiebiorczosci/e-przedsiebiorczosc/innowacje-finansowe/

The amendments proposed by the MSHE offer only a partial solution to the problem by indicating that it is possible to deduct the time actually devoted to R&D activity (thus it is not necessary to regulate the matter formally, e.g. in the employment contract). Unfortunately, there is no explanation how one-off payments in a given month (e.g. annual bonuses) or pay for periods of holiday or sick leave should be treated.

Example 2:

Nor is the act precise with regard to the time when eligible costs may be deducted for the R&D allowance. Due to conflicting interpretations in this respect (which indicate in some situations that costs may be deducted if they are deemed to be revenue-earning costs, or that the costs may be deducted merely because they have been incurred), innovative companies often do not report R&D activities. It often happens that expenditures on R&D activities are not classified as operational costs, but as capital expenditures included in the cost basis of development activities to be deducted at a later time. Thus, their cost automatically increases by the CIT rate of 19%. The draft amendments proposed by the MSHE do not clarify these doubts in any way.

Example 3:

Nor is the statute precise with regard to depreciation of fixed assets and intangible assets used for R&D activity. Tax authorities also issue contradictory interpretations in this respect. Taxpayers are not sure whether they can deduct the total amount of depreciation under the R&D allowance, or only part of it, and which part. In particular, the problem refers to the wording "used for the purposes of research and development activity conducted". If the taxpayer capitalizes tax-deductible costs, incurred e.g. for the development of technologies, they must not be deducted under the R&D allowance as they were not revenue-earning costs. However, once the development of the technology is completed and it is put into use in current operations, the incurred costs cannot be deducted as the devised technology will not be used for the purpose of conducting R&D activity. This refers to the preparation of prototypes and development activities. The draft amendments proposed by the MSHE with regard to the R&D allowance increase the doubts in interpretation, as they introduce clarifications in the analogous provisions concerning the deduction of personnel costs or depreciation of buildings and structures for research and development centres, while failing to address the issues raised above.

A representative of the Ministry of Finance pointed out that the R&D allowance these examples refer to has been in force only since the beginning of 2016 and experiences are being gathered indicating the areas that require clarification. He announced that there is advanced work underway on a draft amendment of the income tax provisions with the fundamental objective of extending the scope of the allowance, particularly in terms of the amount of the deduction and its subjective and objective scope (greater privileges for research and development centres).

RECOMMENDATIONS FOR FURTHER ACTIVITIES:

The Ministry of Finance should take into account the demands to amend the Corporate Income Tax Act to clarify the provisions, or the Minister of Economic Development and Finance should issue a general interpretation to clear up the existing doubts.

16	**THE LACK OF TAX-RELATED INCENTIVES TO UNDERTAKE INNOVATIVE VENTURES (NACB)** Particularly for small entities, financial innovations are related to proportionally higher financial outlays. The possibility to use tax allowances would decrease the burden and constitute an additional incentive to undertake innovative ventures. It would be desirable to amend the provisions of the Corporate Income Tax Act in this respect.	In the course of the Task Force's work, it was established that the possibility to use tax allowances for purchasing software in order to enhance the cybersecurity of electronic banking could constitute an additional incentive to undertake innovative ventures. **ACTIONS UNDERTAKEN:** **The NACB came up with a proposal to introduce a tax allowance for purchasing software in order to enhance the cybersecurity of electronic banking.** Under Art. 18b of the Corporate Income Tax Act, the tax base calculated in accordance with Art. 18 is reduced by any expenses incurred by the taxpayer for purchasing new technologies. "New technologies" mean technological knowledge in the form of intangible assets (in particular the results of research and development work) enabling production of new products or services or improvement of existing ones which have been placed on the world market within the last 5 years. In particular, they comprise various types of licences for using technologies, copyrights, including copyrights to computer programmes, rights to patents or utility models, and knowhow. In the field of financial services, a large part of innovation covers solutions that can be used by customers on a remote basis. Therefore, the formal requirements increase and there is an increasing business need for entities of the financial sector to invest in tools for maintaining cybersecurity at an appropriate level. Thus, the introduction of the tax allowance for purchasing software to enhance the cybersecurity of electronic banking indirectly implies an incentive for entities operating on the financial services market to implement further innovative solutions because it will be possible, for example, to deduct from taxable revenues the expenditure for fulfilling some innovation-driven requirements, thus reducing the income tax due. **RECOMMENDATIONS FOR FURTHER ACTIVITIES:** **The Ministry of Finance should take into account the proposal to introduce a tax allowance for purchasing software for enhancing the cybersecurity of electronic banking offered by banks, and similarly for credit unions.**	During removal
17	**IMPRECISE PROVISIONS ON BANKING SECRECY AND PROFESSIONAL SECRECY (CPI, CDB)** The requirement to maintain secrecy is included in several statutory regulations, in particular the Banking Law and the statutes on the functioning of the capital market. Although the objective and subject of protection is generally analogous, various statutes contain different provisions, while their wording seems to additionally hinder the offering of services whose technological solutions (e.g. DLT) require disclosure of certain information subject to secrecy, thus operating to the detriment of potential recipients of the services.	In the course of the Task Force's work, the CDB, in cooperation with FinTech Poland, pointed out the provisions of three statutes that apply to the financial market and regulate voluntary exemption from banking or professional secrecy differently: 1. Banking Act of 29 August 1997 *Art. 104. 3. Subject to par. 4, the bank shall not be obliged to maintain banking secrecy with respect to the person whom the information subject to secrecy refers to. Subject to Art. 105, Art. 106a and Art. 106b, the information may be disclosed to third parties exclusively if the person the information refers to authorizes the bank in writing to transfer specific information to a designated person or organizational unit. Such authorization may also be expressed in electronic form. In that case, the bank shall be obliged to record the authorization expressed in that manner on an IT data carrier in the meaning of Art. 3(1) of the Act on Computerization of Entities Performing Public Functions of 17 February 2005.*	During removal

It is proposed to standardize these provisions so that interested parties can provide blanket consent to disclosure of information subject to secrecy to any group of persons (e.g. customers of a specific institution), or for specific information (e.g. the designation of an account) or a specific objective for the disclosure (e.g. information related to a specific service). To avoid any doubts in interpretation, it is proposed to specify in all the statutes that electronic form is proper for making such statements of will.

2. Trading in Financial Instruments Act of 29 July 2005

Art. 150. 1. It shall not violate the obligation to maintain professional secrecy to transfer the information subject to such secrecy:

1) directly to the person the information refers to, or any other entity to whom the person has granted written authorization to receive such information, subject to par. 2;

3. Act on Investment Funds and Management of Alternative Investment Funds of 27 May 2004

Art. 282. 3. It shall not violate the obligation to maintain professional secrecy to transfer the information subject to such secrecy:

1) upon the consent of the person the information refers to;

In the opinion of the KNF Office, it is not possible to amend Art. 104(3) of the Banking Law. The account holder should be aware whom the data subject to secrecy are disclosed to. Under current law, the data are disclosed only in strictly defined situations to persons indicated by the beneficiary of the protection, and entities specified by law. By introducing the possibility to express blanket consent, any person might access the protected data, completely beyond the control of the person the data refer to, for the sake of the interests of entities offering financial services.

ACTIONS UNDERTAKEN:

The CDB and FinTech Poland proposed legislative changes on the application of professional secrecy with regard to the following statutes regulating the functioning of the capital market:

1. Act on Investment Funds and Management of Alternative Investment Funds of 27 May 2004

In Art. 282, par. 3c shall be added as follows:

3c. The consent referred to in par. 3(1) may be expressed in written or electronic form. If the consent is expressed in electronic form, the consent shall be recorded by the entity obliged to maintain secrecy on an IT data carrier in the meaning of Art. 3(1) of the Act on Computerization of Entities Performing Public Functions of 17 February 2005.

This proposal is acceptable to the KNF Office.

2. Trading in Financial Instruments Act of 29 July 2005

Art. 150(1)(1) shall read as follows:

1) directly to the person the information refers to, or any other entity to whom the person has granted written authorization to receive such information, subject to par. 2. The person the information refers to may authorize the entity obliged to maintain secrecy to transfer specific information to a designated person or organizational unit. Such authorization may also be expressed in electronic form. In that case, the entity obliged to maintain secrecy shall be obliged to record the authorization expressed in that manner on an IT data carrier in the meaning of Art. 3(1) of the Act on Computerization of Entities Performing Public Functions of 17 February 2005.

		This proposal is acceptable to the KNF Office. **RECOMMENDATIONS FOR FURTHER ACTIVITIES:** **The MF should take into account the proposed amendment of the statutes regulating the functioning of the capital market with regard to the application of professional secrecy**	
18	**UNCERTAINTY AS TO THE APPLICATION OF THE REGULATION ON BANKING SECRECY IN RELATION TO THE CENTRAL DATABASE OF ACCOUNTS (CDBA) (CPI)** The draft CDBA Act does not clarify how the transfer of information on accounts by obligated institutions impacts its coverage by banking secrecy. It would be desirable to clarify this issue in the new version of the draft CDBA Act.	In the course of the Task Force's work, a representative of the MF announced that this issue would be clarified in the course of further work on the draft CDBA Act. **RECOMMENDATIONS FOR FURTHER ACTIVITIES:** **When working on the draft Central Database of Accounts Act, the MF should take into account any doubts related to banking secrecy or the professional secrecy of credit unions.**	**During removal**
19	**EXCESSIVE GENERALITY OF THE CRIMINAL PROVISION OF ART. 171(1) OF THE BANKING ACT (CPI)** Under Art. 171(1) of the Banking Act: *Whoever carries out activity consisting of collecting funds from other natural persons, legal persons or organizational units without legal personality without a licence, to grant credits or monetary loans or expose such funds to risk in any other way, shall be subject to a fine of up to PLN 10,000,000 and the penalty of deprivation of liberty for up to 5 years.* This provision introduces severe sanctions while specifying the activity subject to the sanctions in a very general and ambiguous way. Among other things, it refers to "collecting funds from other natural persons ... to expose them to risk". This provision covers a large number of activities not related to banking activity at all or the regulatory monopoly of banks to carry it out. It should be made more specific, as its current form raises practical doubts in the legal evaluation of innovative models related e.g. to crowdfunding or granting loans (even if there is no deposit activity involved and the funds are collected in a different way).	In the course of the Task Force's work, it was established that it would be difficult to work out proposals to amend Art. 171(1) of the Banking Act. However, it was agreed that this barrier could be resolved if the KNF Office described anonymous cases of illegal activity on the financial market on the basis of notifications directed to the prosecutor's office. The descriptions could be placed on the KNF website. Furthermore, to remove any legal doubts as to the application of Art. 171(1) of the Banking Act, the Task Force described the identified models of crowdfunding, including an indication of the applicable provisions of law (Annex No. 2). **ACTIONS UNDERTAKEN:** **The KNF Office developed descriptions of situations in which activity was illegally carried out on the financial market, to publish them on the KNF website.** **In cooperation with the CFC, CPI and FinTech Poland, the KNF Office described the identified crowdfunding models, including an indication of the applicable law (see Annex No. 2 to the Report).** **RECOMMENDATIONS FOR FURTHER ACTIVITIES:** **The KNF Office should place on its website examples of illegal activity on the financial market.**	**During removal**

20	**THE USE OF TRUSTED PROFILES OF ELECTRONIC IDENTIFICATION FOR BUSINESS PURPOSES** **(CDB, KDPW, PIA, CFAM)** The availability and interoperability of the solutions used under the ePUAP platform are limited, which hinders its use for commercial financial services. Basically, the solutions are designed for maintaining contact with the state administration. For example, the option to use the trusted profile under the ePUAP platform would facilitate the exchange of correspondence in the process of submitting declarations and documents at the stage of concluding contracts for membership of KDPW. It would be desirable to amend the Act on Computerization of the Activity of Entities Performing Public Functions to include KDPW as an entity accepting correspondence sent via an ePUAP account and trusted profile. It would also be justified to introduce the possibility to use the trusted ePUAP profile in the insurance sector as a mechanism to authenticate customers in electronic services offered by insurance companies to their customers, and to authorize transactions. The eID Programme implemented by the MDA should deliver a uniform and secure model for identifying market participants for business purposes, including in relation to financial services. Alongside the trusted profile, such functionalities should be included in other solutions, including the digital identity card or the recently proposed mDocuments.	In the course of the Task Force's work, it was pointed out that activities by the public administration and private entities with regard to the use of electronic identity for public services and private services are multifaceted, as results from the need to enhance the effectiveness of trading and facilitate contacts between citizens and the public administration, while ensuring a high level of security. Under the governmental project "From Paper-Based to Digital Poland", in particular under the streams implemented by the MDA "Digital Identity" and "Digital Public Services", the activities being carried out are aimed at implementing digital identification and authentication of citizens in the public administration and services on the basis of a federation model of identification, i.e. one based on means of electronic identification issued by many entities, with special reference to the role of the private sector, including the banking sector. On the way to use of a federation model of digital identity, the first step consisted of the cooperation of the public administration with the banking sector with regard to electronic channels for submitting applications under the "Family 500+" Programme and the confirmation of the trusted ePUAP profile at the level of electronic banking. To implement the devised solutions, it is necessary to ensure regulatory support, by preparing appropriate legislative changes to statutes and implementing regulations. A significant impetus to intensify work in this field resulted from the entry into force of the eIDAS Regulation on 1 July 2016. The next step was the entry into force on 7 October 2016 of the Act on Trust Services and Electronic Identification of 5 September 2016, which laid the institutional foundations for a federation model of identification and authentication and trust services in accordance with European regulations, including the eIDAS Regulation. Under the project of the MDA, further activities are to establish technical conditions for the state provider and commercial providers of eID services and trust services, build the national node of identity ensuring integration with providers of eID services and providers of digital public services. The work is based on the assumption that solutions dedicated to commercial services will be introduced. It will be possible to create commercial nodes of electronic identification which may be connected with the national node to deliver public administration services. The national node enables authentication in public services (a commercial mode may, but does not have to be involved in the process), while it is only possible by means of the commercial node in commercial services. In the course of the Task Force's work, it was pointed out that the activities by the private sector for implementing digital identity involve actions to create a private identity node under the NCH. The node built under the NCH, as a system of electronic identification connected with the national node, will simultaneously enable the use of means of electronic identification issued by individual banks, in all public services available under the national node, and also enable entities of the private sector to use an identity issued by a bank in business processes, while enhancing the security and effectiveness of economic trade, including in the framework of innovative financial services.	**Not removed**

21	**ENSURING GREATER FLEXIBILITY OF HR MANAGEMENT MECHANISMS, DECREASING PERSONNEL COSTS IN STARTUP COMPANIES (PIA)** It should be pointed out that the Labour Code is not flexible with regard to startups whose operation requires a dynamic approach. It would be desirable to amend the labour law. Furthermore, it should be pointed out that the costs of severance payments may be significant in the development of a startup or its later failure. It would be justified to amend the Collective Redundancies Act.	The Task Force could not process the demands due to the significant complexity of the matter.	**Not removed**
22	**THE LACK OF A LEGAL BASIS FOR INSURANCE COMPANIES TO OBTAIN INFORMATION FROM TAX OFFICES (PIA)** From the point of view of insurance companies, it would be desirable for the tax office to confirm the authenticity of the documents submitted by injured persons in the process of dealing with personal injury (e.g. considering claims for lost income). The Tax Ordinance of 29 August 1997 should provide for the possibility of providing information to insurance companies.	In the course of the Task Force's work, it was pointed out that insurance companies are subject to private law (and not public law) and basic data protection standards should be followed (which will become stricter upon the entry into force of the GDPR). Taking into account the potential costs of such changes (tax offices could receive a very large number of requests to authenticate documents), it would be necessary to perform the relevant financial analyses, establish which entities would incur the costs (insurance companies?) and consult with the units responsible for organizing the work in the tax administration. In the course of the Task Force's work, it was pointed out that it is justified to consider the possibilities that would become available upon the creation of the national node, as designed by the MDA, on the basis of the Act on Trust Services and Electronic Identification. It was agreed that this barrier should be analyzed further by the MDA due to its horizontal nature, also covering other financial institutions (e.g. banks and credit unions). **RECOMMENDATIONS FOR FURTHER ACTIVITIES:** **The MDA should work on enabling financial institutions to obtain information from tax offices in an automated way.**	**During removal**
23	**REGULATIONS CONCERNING INTELLECTUAL PROPERTY RIGHTS AT UNIVERSITIES (PIA)** Each university now retains the rights to the results of scientific research conducted at the university. If it were possible to transfer the intellectual property rights to the project teams or individual scientists, they could be engaged by startup companies, including the intellectual property rights. It would be desirable to facilitate the transfer of intellectual property rights to project teams or individual scientists, or their buyout of the rights.	In the course of the Task Force's work, it was pointed out that it is justified to establish contact with the MSHE in order to clarify this issue. **ACTIONS UNDERTAKEN:** **The MED established contact with the MSHE in order to clarify this barrier related to the regulation of intellectual property rights at universities.** The MSHE confirmed that this barrier was removed in the 2014 amendment of the Higher Education Act. Art. 86 of the act was amended at that time (Art. 86e–h) to permit the so-called enfranchisement of scientists. This solution was further improved in the so-called First Innovation Act of 2016.	**Unjustified**

24	**PURCHASES OF INNOVATIVE TECHNOLOGIES IN COMPANIES SUBJECT TO THE PUBLIC PROCUREMENT LAW (PIA)** The purchase of innovative technologies requires selection of a contractor in a public procurement procedure. The selection of the provider of innovative technologies on the basis of the Public Procurement Law (PPL) extends the performance period and means that the provider selected in the tender may not possess sufficient competences to perform the project. It would be desirable to facilitate the selection of the provider of innovative technologies on the basis of an opinion by a committee appointed by the enterprise.	In the course of the Task Force's work, a representative of the MED pointed out that there were no obstacles to a tender committee appointed inside the enterprise expressing its opinion on the selection of the contractor. Under current regulations, the manager of the contracting entity responsible for conducting the proceeding, as stated in Art. 19 PPL, must appoint a tender committee if the value of the tender exceeds the EU thresholds, and may appoint it if the value is lower. The tender committee is a team supporting the manager of the contracting entity in evaluating whether the contractors fulfil the conditions for joining the public procurement procedure and examining and evaluating the tenders. The provisions do not specify who should be appointed to the committee, leaving that to be decided by the manager of the contracting entity. It was agreed that this barrier does not exist and it was not necessary to undertake further activities.	**Unjustified**
25	**THE USE OF CLOUD COMPUTING SERVICES IN BUSINESS (PIA, CFAM)** To ensure the development of financial innovations, supervised entities should be enabled to use cloud computing services as a more secure, less expensive solution, providing greater availability for customers and recipients of services. It is necessary to remove regulatory barriers hindering cloud computing.	As established by the Task Force, entities supervised by the KNF are generally allowed to use solutions based on cloud computing. The solutions must meet relevant legal requirements on outsourcing and comply with prudential regulations. In particular, cooperation with external providers of IT services is dealt with by the KNF in its Recommendation D for banks[5], Recommendation D-SKOK[6] for credit unions, and the KNF's sectoral guidelines concerning management of the fields of information technologies and the security of the telecommunications and information environment[7], in particular Guideline No. 10.6 on requirements related to the processing of personal data, inter alia in the cloud computing model. The KNF Office performed an in-depth analysis of the supervisory expectations with regard to supervised entities' use of solutions based on cloud computing, to work out and publish the position of the KNF Office in this respect. **ACTIONS UNDERTAKEN:** **The KNF Office published a position on supervised entities' use of cloud computing solutions.**	**Removed**
26	**ELECTRONIC FORM OF PROCEEDINGS BY THE SUPERVISORY AUTHORITY (CFAM)** By introducing the possibility to carry out proceedings in electronic form, e.g. by means of the Portal system, it would become easier to communicate and exchange documents with the KNF Office, but could also result in the standardization of the information required required by the KNF Office in particular types of proceedings and reduce the often extensive documentation which must be stored by both parties	The ePUAP platform makes it possible to conduct administrative proceedings; the system is intended for communications between the administration and citizens and market participants. It is not justified to implement another system (e.g. Portal). In the course of the Task Force's work, it was pointed out that the ePUAP platform has made it possible to submit certain documents to the KNF Office in electronic form (e.g. applications for approval of a prospectus). It was indicated that in relation to implementation of the Electronic Signature Act of 18 September 2001 and the Act on Computerization of Entities Performing Public Functions of 17 February 2005, the KNF Office launched an electronic incoming correspondence box (EICB) which makes it possible to submit electronic documents to the KNF Office. The EICB of the KNF Office was launched on the ePUAP platform, made available by the MIA to public entities in order to render electronic services. In order to use the EICB of the KNF Office, it is necessary to complete a form on the ePUAP website.	**Unjustified**

[5] https://www.knf.gov.pl/knf/en/komponenty/img/Recommendation_D_44255.pdf
[6] https://www.knf.gov.pl/knf/pl/komponenty/img/Reko_SKOK_D_47953.pdf
[7] https://www.knf.gov.pl/dla_rynku/regulacje_i_praktyka/rekomendacje_i_wytyczne/wytyczne_dotyczace_zarzadzania_obszarami_IT?articleId=39987&p_id=18.

	to the proceeding, and would also reduce operational costs. It would be desirable to amend the current regulations and prepare or use the currently operating tools (e.g. the Portal system) to facilitate communications and proceedings by supervised entities with the KNF Office.		
27	**THE FAILURE TO ISSUE A REGULATION OF THE COUNCIL OF MINISTERS PURSUANT TO ART. 3A(4) OF THE ACT ON CREDIT UNIONS OF 5 NOVEMBER 2009 (NACU)** The inability to submit statements of will in electronic form in relation to the actions mentioned in Art. 3 of the Act on Credit Unions is a barrier to the development of electronic services by credit unions. The Council of Ministers should issue the regulation authorized under Art. 3a(4) of the Act on Credit Unions.	**ACTIONS UNDERTAKEN:** **The MF devised a draft Regulation of the Council of Ministers on Documents Concerning Activities of Credit Unions Prepared on IT Data Carriers.** On 5 June 2017, the draft regulation of the Council of Ministers pursuant to Art. 3a(4) of the Act on Credit Unions of 5 November 2009 was published on the website of the GLC for consultations. **RECOMMENDATIONS FOR FURTHER ACTIVITIES:** **The MF should finalize its work on the draft Regulation of the Council of Ministers on Documents Concerning Activities of Credit Unions Prepared on IT Data Carriers.**	During removal
28	**OMISSION OF CREDIT UNIONS IN THE LEGISLATIVE WORK ON THE INTRODUCTION OF DIGITAL POLAND (NACU)** The NACU would like to point out the role the credit unions, operating on the Polish financial market for twenty years now, can and should play in the implementation of the Responsible Development Strategy. In the E-Stats field, credit unions are institutions that can make a significant contribution to the implementation of the plan's objectives. With some two million members in Poland, the unions, like banks, offer electronic access to their accounts. Such access may be used in an analogous way as by banks to increase the overall supply of e-services and increase the interest of citizens who are members of the unions in using electronic channels to contact the public administration. Not only would the exclusion of credit unions from the respective legislative process weaken the desired effect, it would also undermine competition on the financial market and violate the constitutional principle of equality.	As established by the Task Force, it is necessary to undertake activities to engage credit unions in the development of the Digital Poland Programme by amending the relevant legal provisions, as requested by the NACU. **ACTIONS UNDERTAKEN:** **The MF included in the draft Act Amending the Act on Trust Services and Electronic Identification and Certain Other Acts the following demands raised by the NACU:** Amendment of the Act on Computerization of Entities Performing Public Functions of 17 February 2005 by adding point 5 in Art. 20c(3) as follows: *5) a credit union, as referred to in the Act on Credit Unions of 5 November 2009 (Journal of Laws 2016 item 1910, as amended).* Amendment of the Act on Credit Unions of 5 November 2009 by adding par. 4 in Art. 3 as follows: *4. Credit unions may provide their members trust services and provide their members means of electronic identification in the meaning of the provisions on trust services.* **RECOMMENDATIONS FOR FURTHER ACTIVITIES:** **The MDA should finalize its work on the draft Act Amending the Act on Trust Services and Electronic Identification and Certain Other Acts with regard to the demands raised by the NACU.**	During removal

29

THE REQUIREMENT TO SUBMIT DIRECT DEBIT ORDERS IN WRITING (CFC)

To facilitate the rendering of financial services in an online environment, it would be desirable to amend the Banking Act to make it possible to place a direct debit order in the electronic banking system without the necessity to sign paper documentation and deliver it to the bank.

As established by the Task Force, it is justified to abandon the requirement to submit to the bank a written version of a direct debit order placed in the electronic banking system, while ensuring appropriate security mechanisms. It was pointed out that this solution would be advantageous both for customers, who may find this form of payment (e.g. for loan/credit instalments and insurance premiums) more convenient, and financial market entities, which will be able to minimize their costs and thus offer financial products on better terms.

ACTIONS UNDERTAKEN:

The CFC proposed a provision to be added to the Banking Act under which all financial market entities could use direct debit without the necessity to maintain a paper flow of documentation.

It is proposed to introduce the following provisions to the Banking Act:

1. The holder of an account with a bank or credit union may consent to placement of an order with the bank or credit union to debit his or her account with amounts due under a contract with a financial market entity in the meaning of the Act on Consideration of Complaints by Financial Market Entities and on the Financial Ombudsman of 5 August 2015 (direct debit).
2. The account of the financial market entity shall be credited upon submission to the bank or credit union of the consent of the holder of the bank account. The consent granted by the holder of the account shall authorize the financial market entity to issue a direct debit order to the bank or credit union without the account holder's granting separate consent to the bank or credit union to debit the account.
3. Settlement transactions may be executed by means of a direct debit order provided that the holder and the financial market entity maintain an account with the banks or credit unions which have concluded an agreement on the use of direct debit specifying in particular the scope of the liability of the banks and credit unions executing the direct debit order, the reasons for refusal by the account holder's bank or credit union to execute a direct debit order, the procedure for pursuing mutual claims of banks and credit unions resulting from the revocation of the direct debit order by the account holder, uniform templates for forms, and the rules for execution by banks and credit unions of direct debit orders by means of IT data carriers.
4. The account of the financial market entity may effectively be credited provided that the bank or credit union of the financial market entity has obtained sufficient funds for executing the direct debit order from the account holder's bank or credit union.
5. The account holder may revoke the consent referred to in par. 1 by informing the financial market entity or the bank or credit union accordingly.

RECOMMENDATIONS FOR FURTHER ACTIVITIES:

The MF should take into account the proposal to introduce a provision to the Banking Act under which all financial market entities could use direct debit without the necessity to maintain a paper flow of documents.

During removal

Payment Sub-Group

No.	Name and description of barrier (the entity raising it)	Arrangements/actions taken/recommendations	Status of barrier[1] (removed, during removal, not removed, unjustified, beyond the scope of work)
30	**SUB-OUTSOURCING IN THE RENDERING OF PAYMENT SERVICES (FINTECH POLAND)** An area which should be regulated in accordance with EU legislation (inter alia PSD2) is the outsourcing of payment services for (national) payment institutions, including the admission of sub-outsourcing in payment activity under the national regulations. Many innovative payment services offered by national payment institutions are based on the assumption that part of the activities are carried out by third parties on behalf of the national payment institution. There are also many projects which assume the use of services delivered by even further providers, at least with regard to IT services. Regulation of the possibility to use services delivered by further outsourcing partners would have a favourable impact on the development of innovative financial services in Poland.	The Task Force analyzed this barrier in terms of doubts in interpretation as to the possibility to use sub-outsourcing in the payment services sector (i.e. national payment institutions and national electronic money institutions). It was pointed out that the PSA does not refer directly to the issue of sub-outsourcing, but the introduction of additional provisions in this respect could have an adverse impact on the development of innovations. In the course of the Task Force's work, it was agreed that this barrier would be further worked on. It was emphasized that as a rule the objective of the Task Force was not to create additional regulations which could hinder the development of the payment services market in Poland.	Unjustified
31	**REGULATION OF CRYPTOCURRENCIES IN THE ACT ON THE PREVENTION OF MONEY LAUNDERING AND TERRORIST FINANCING, PREMATURE COVERAGE OF "VIRTUAL CURRENCIES" IN THE DRAFT CENTRAL DATABASE OF ACCOUNTS (CDBA) ACT (FINTECH POLAND, CPI)**	In the course of the Task Force's work, a representative of the MF pointed out that a further version of the draft act amending the Act on Prevention of Money Laundering and Terrorist Financing was prepared in connection with implementation of AMLD4. The draft contains a definition of "virtual currency" which takes into account some of the comments formerly submitted on the draft CDBA Act. The work on the draft CDBA Act was suspended temporarily. It will be resumed upon completion of the governmental stage of the legislative process concerning the draft Act on Prevention of Money Laundering and Terrorist Financing. It is assumed that references to "virtual currencies" will be removed from the new draft CDBA Act.	During removal

[7] The statuses of the identified barriers are defined as follows: Removed – a barrier has been removed completely, no recommendations for further activities; During removal – certain activities have already been undertaken and/or recommendations for further activities have been formulated; Not removed – a barrier is related to the FinTech field, but no acceptable solution has been worked out in the course of the Task Force's activities; Unjustified – a barrier does not exist; Beyond the scope of work – a barrier does not refer to the FinTech field.

	At the moment, the Act on Prevention of Money Laundering and Terrorist Financing of 16 November 2000 contains no reference to cryptocurrencies. On the EU level, work is underway to introduce a definition of virtual currencies and to subject them to application of AMLD4. It is proposed to base the Polish regulations on the legal acts published in the EU. The draft CDBA Act includes an attempt unprecedented anywhere in the world to regulate "virtual currencies" (a statutory term), which may have an adverse impact on the development of blockchain. It would be desirable to clarify the issue of "virtual currencies" in the draft CDBA Act, above all by amending the definitions, or completely abandon this matter in the draft.	**RECOMMENDATIONS FOR FURTHER ACTIVITIES:** **The MF should take into account the demand to remove the reference to "virtual currencies" from the draft Central Database of Accounts Act.** **The MF should finalize its work on the draft amendment of the AML Act containing a definition of "virtual currencies".**	
32	**APPLICATION OF AML REQUIREMENTS TO ENTITIES OF THE FINANCIAL INNOVATION SECTOR (FINTECH POLAND)** Currently, startups and other entities of the FinTech sector are not subject to any concrete legal regulation, which makes it impossible to determine explicitly whether FinTech entities will be subject to AMLD4 or the AML Act. Nevertheless, as this is a sector of so-called innovative methods of financing, it is justified to regard FinTech entities as obligated entities in the meaning of these provisions. It is necessary to formulate a legal definition of entities of the FinTech sector on the level of universally binding law, or alternatively under soft law, through the issuance of respective recommendations by the KNF. In line with the concept to create a so-called regulatory sandbox, it would be justified to specify that FinTech entities are excluded from the application of the AML regulations, or to establish a limit concerning the size of operations. Such regulation would encourage free development. However, if the limit were exceeded, for the sake of the stability and security of the financial market, the entity would be deemed an obligated entity in the meaning of the AML provisions.	As agreed by the Task Force, neither the EU provisions nor international recommendations concerning the prevention of money laundering and terrorist financing provide for an exemption from the AML requirements for startups which are obligated institutions. It was emphasized that for security reasons, entities of the FinTech sector should comply with the AML provisions, as their complete abandonment (e.g. in the regulatory sandbox approach) would offer an incentive to criminal activity. In the course of the Task Force's work, it was pointed out that the international Financial Action Task Force (FATF) has engaged in a dialogue with the FinTech sector to evaluate the impact of new technologies on AML issues.	**Not removed**

33	**PROBLEMS IN BANKS' COOPERATION WITH COMPANIES DEALING WITH DIGITAL CURRENCIES (CPI)** Businesses are not able to operate now if they do not have a bank account, and the lack of a bank account automatically brings their operations to an end. A problem is experienced by some businesses dealing with digital currencies, as banks refuse to open new bank accounts for them or close their existing accounts. Banks often do so without stating a specific reason (e.g. the practice does not result from a finding that the bank account is being used for any illegal activities). A similar situation occurred for example in the UK and Australia, whether the regulatory and supervisory authorities decided to act and clear up the situation. It would also be desirable for the Polish public administration to clarify the matter and introduce appropriate regulations if necessary.	In the course of the Task Force's work, it was pointed out that closing of open accounts or refusal to open accounts for entities dealing with digital currencies is related to the bank's approach to risk, largely with regard to money laundering or terrorist financing. The lack of transparency and the inability to establish the beneficiary of the funds transferred in the course of selling digital currencies significantly increases the risk, and thus cooperation with entities trading in digital currencies may not be acceptable in terms of the risk allowed by banks.	Not removed
34	**ADDRESS VERIFICATION BY OBLIGED INSTITUTIONS (CPI)** In accordance with Art. 9a(1) of the Act on Prevention of Money Laundering and Terrorist Financing, verification of the customer occurs by checking and confirming the customer's data, including the customer's address (as specified in Art. 9(1)(1)). Such verification has been performed using the customer's identity card. However, the new identity cards do not contain the person's address, which makes verification of the address more difficult for obligated institutions, in particular innovative entities rendering financial services online. The problem was not resolved by the position issued on this matter by the IGFI on 25 November 2014, IF6/740/72/MMX/14/RO-108599. It seems to ignore the obligation to check and confirm the data obtained in the process of identification, as expressly mentioned in Art. 9a(1). It would be desirable to abandon the obligation of obligated institutions to verify the address of natural persons.	As established by the Task Force, this problem will be taken up in the legislative process concerning the amendment of the Act on Prevention of Money Laundering and Terrorist Financing as part of the implementation of AMLD4. In accordance with the draft prepared by the MF and published on the website of the GLC on 5 May 2017, obligated institutions will not be required to collect address data as part of the identification of their customers. This provision results from the difficulty, previously identified by the MF, in verifying the address data of natural persons (while it is quite easy to identify the address data, it is problematic to verify the data, which is a subsequent and related stage in applying financial security measures, as the obligated institution will probably not be able to do so on the basis of identity cards or reliable independent sources). **ACTIONS UNDERTAKEN:** **In the course of the legislative process concerning the draft Act on Prevention of Money Laundering and Terrorist Financing, the MF took into consideration the verification of customers' addresses by obligated institutions in the case of new identity documents.** **RECOMMENDATIONS FOR FURTHER ACTIVITIES:** **The MF should finalize its work on the draft Act on Prevention of Money Laundering and Terrorist Financing, including verification of customers' addresses by obligated institutions in the case of new identity documents.**	During removal

35

OUTSOURCING OF HEIGHTENED MEASURES OF FINANCIAL SECURITY (CPI)

In accordance with Art. 9h of the Act on Prevention of Money Laundering and Terrorist Financing, obligated institutions may use services provided by other entities for performing the obligations specified in Art. 8b(3)(1)–(3) (financial security measures). However, it is not possible to outsource the heightened financial security measures referred to in Art. 9e(2). In practice, this creates difficulties for innovative entities (e.g. agents) which are service providers for financial institutions. It would be desirable to introduce the possibility to outsource heightened financial security measures as well.

In the course of the Task Force's work, it was pointed out that Art. 42 of the Act on Prevention of Money Laundering and Terrorist Financing lays down additional restrictions, above and beyond the European provisions, concerning the contracting of heightened security measures to third parties which are not financial institutions. As established by the Task Force, this problem will be taken up in the legislative process concerning the draft amendment of the Act on Prevention of Money Laundering and Terrorist Financing as part of the implementation of AMLD4. The KNF Office proposed changes to the draft amendment of the act published on the website of the GLC on 5 May 2017. It was agreed that these proposals would be taken into account by the MF.

ACTIONS UNDERTAKEN:

In the course of the legislative process concerning the draft Act on Prevention of Money Laundering and Terrorist Financing, the KNF Office proposed changes to the provisions on outsourcing of heightened security measures.

The proposal of the KNF Office was taken into account by the MF in the draft amendment of the Act on Prevention of Money Laundering and Terrorist Financing of 12 July 2017.

RECOMMENDATIONS FOR FURTHER ACTIVITIES:

The MF should finalize its work on the draft Act on Prevention of Money Laundering and Terrorist Financing including changes to the provisions on outsourcing of heightened security measures.

During removal

36

AVAILABILITY OF CENTRAL BANK MONEY FOR MARKET SETTLEMENT (CDB)

The security of trading in distributed ledger technology (DLT) requires ensuring the possibility to carry out settlement in central bank money (ePLN?). The models for settlement based on cryptocurrencies such as Bitcoin and Ether which are currently being tested do not guarantee the required level of security, due at least to the public nature of the blockchains where these cryptocurrencies function. It would be justified to allow for money settlement in central bank money (ePLN?) in an issue dedicated to electronic trading (blockchain). At the preliminary stage, it is necessary to consider the issuance of money to a limited group of users for project purposes (so-called sandbox). This direction for the development of the payment system is provided for in the ESMA report of 7 February 2017.

At the current stage, the NBP takes a negative position on the demand to issue a virtual currency and does not allow for issuing such currency. In the opinion of the NBP, neither the legal requirements on the issuance of currency in the form of banknotes or coins, i.e. the Constitution of the Republic of Poland and the National Bank of Poland Act of 29 August 1997, nor security considerations related to the immaturity of the distributed ledger technology which could be used in the issuance of virtual currencies, permit the formulation of a positive position on this demand.

It should be pointed out at the same time that new technologies (including distributed ledger technology) used on the Polish financial market and in foreign countries, and trading in virtual currencies on the Polish market, are within the scope of interest of the NBP, in particular in view of the security of financial trading and potential risks for users and financial institutions.

In the course of the Task Force's work, representatives of market participants (including banks and depository and clearing institutions) pointed out the necessity to take up analytical work in the regulatory area in order to evaluate the legal consequences of the central bank's issuance of virtual currency, as well as to examine the available technological solutions which could support such issue while maintaining all security measures. The representatives of the market participants expressed their readiness to engage in the activities of a task force which, in their opinion, should be appointed to perform such analyses, following the example of other markets where the central banks establish cooperation with consortia including the largest entities operating on the respective financial market and the most highly regarded tech companies.

Unjustified

		In the course of the Task Force's work, it was pointed out that the central banks in the following countries are the most advanced in these actions: the US, Canada, the UK, EU/ECB, Estonia, Singapore, Russia, Brazil and China. The representatives of the market participants pointed out that no information has been published in Poland with regard to Poland's engagement in searching for more effective, less expensive and more secure solutions based on virtual currency of the central bank, which would make it possible to maintain the competitiveness of the Polish financial market.	
37	**MATERIAL FORM OF CHEQUES AND PROMISSORY NOTES (CDB)** Cheques and promissory notes are universally accepted payment instruments which may be used in a number of ways in business activity, and are also the subject of extensive literature and case law under national and international regulations. However, their material form prevents them from being used in innovative solutions based on advanced technologies (e.g. blockchain). It would be desirable to work out solutions making it possible to issue cheques and promissory notes in electronic form.	In the course of the Task Force's work, a representative of the CDB submitted a demand to work out a solution making it possible to issue cheques and promissory notes in electronic form. He also pointed out that cheques and promissory notes are falling out of use, inter alia due to their exclusively material form which is not adequate to the dynamic technological progress. However, promissory notes remain a frequent solution to secure receivables, while some countries also use cheques as a universally acceptable instrument of payment. Over 100 years of using these instruments has resulted in a wealth of literature and case law, practical experience and case studies. Because the situations in which these instruments have been used remain current, the CDB is of the opinion that it justified to make it possible to use these achievements under current technological conditions, where electronic form and full automation are a precondition for ensuring economic efficiency. With regard to this demand, the Task Force established operational contact with the MJ to obtain an opinion on the possibility to introduce electronic form of cheques and promissory notes. Proposals prepared by the Task Force to amend the Cheque Law and the Promissory Note Law to facilitate the use of these documents in electronic form were also submitted. In response, the Task Force received a draft opinion from the MJ pointing out that under the current wording of Art. 78^1 §1 CC, to maintain the electronic form of a legal act it is sufficient to make a statement of will in electronic form and sign it with a qualified electronic signature. Additionally, making a statement of will in electronic form is equivalent to making a statement of will in paper form. The amendment of the Civil Code and introduction of Art. 78^1 §1 CC expressly established the use of electronic form equivalent to paper form in Polish law. It should be noted at the same time that "electronic form" in colloquial understanding means any electronic form of information, including statements of will. It has a strictly defined meaning for legal purposes and is deemed effective provided that the conditions mentioned in Art. 78^1 §1 CC have been fulfilled. "Electronic form" should have the same meaning in the amended Art. 245 of the Civil Procedure Code, which states that a private document in paper or electronic form is evidence that the person who signed it made the statement included in the document. Considering the current wording of Art. 77^3 CC, it should also be pointed out that any carrier of information which enables discernment of its content is a document. In view of the foregoing, the MJ is of the opinion that the changes proposed by the Task Force to the civil law and the law on promissory notes with regard to the electronic form of cheques, promissory notes and endorsement do not seem necessary as the Civil Code expressly provides for the possibility to use this form for documents of this type. Referring to the concept as such of issuing cheques and promissory notes in electronic form, the MJ pointed out that due to the increasing computerization and digitalization of documents in business activity, this demand should generally be deemed to be worth accepting. Nevertheless, it was pointed out that the use	During removal

of cheques in business activity is steadily declining, unlike promissory notes, which are mainly used to secure debt (credit). Undoubtedly the introduction of the requested possibility could accelerate and facilitate business activity, in particular the securing of receivables. However, it seems that the potential introduction of changes in this area should be preceded by an analysis of potential difficulties and threats, as the future legal solutions must not impair the security of trading in these instruments.

Due to the smaller role of cheques in business activity, the following draft comments by the MJ refer mainly to promissory notes, but they also remain applicable to the possibility of issuing cheques in electronic form.

In the opinion of the MJ, the problems related to the potential introduction of the possibility of issuing cheques and promissory notes in electronic form may be divided into three basic groups:

1. Axiological issues concerning the acceptability of electronic form by participants in business activity

It should be emphasized that not all potential participants in the trading in promissory notes may be willing to draw up and use documents in electronic form. The situation is not the typical one in which the citizen "receives" an additional option to draw up/submit documents to the public authorities, but the possibility to draw up documents (usually by the entity securing its receivables) in electronic form by one or both parties to civil contracts. Even if the bank granting the credit or the lender and the borrower accept such a form to issue the document, this form may not be acceptable to a third party, e.g. an entity endorsing a promissory note. In other words, not all participants are willing or possess the capabilities and necessary IT logistics not only to use such form to issue these instruments, but also to secure their justified interests. It should be emphasized in this respect that the essence of a promissory note is its transferability and the possibility of assigning the rights incorporated in the promissory note to third parties.

When drafting potential provisions in this respect, it is necessary to take into consideration the possibility of "restoring" the paper form of the promissory note at the request of at least one participant in the trading of promissory notes.

2. Issues related to potential threats to commerce posed by electronic form

An intrinsic characteristic of a promissory note, as mentioned above, is the option to transfer it—in the sense of transferring possession of the document—and any related rights to third parties. Therefore, it should be pointed out that a promissory note exists in the original, while creating copies of it does not result in the creation of a second promissory note or further liabilities thereunder. This ensures the safety and security of trade in promissory notes, and the liability under the promissory note remains unchanged. As far as promissory notes in electronic form are concerned, the very transfer of the promissory note essentially means that a copy of the original promissory note is being transferred. This involves, at least in theory, the possibility of duplicating the liability under the promissory note and hypothetically other components of the document. Introduction of the option to issue promissory notes in electronic form would limit or remove several characteristic features for trading in promissory notes, including the lack of transfer of possession of the document and the lack of a handwritten signature.

Another issue that seems highly important is the creation of a potential IT platform to store promissory notes issued in electronic form, where they could not be copied or transferred. Without such regulations in place, promissory notes in electronic form would be traded on a highly inaccessible market and, contrary to the proponents' concept, it would not contribute to enhancing the significance of promissory notes in business activity.

Another issue related to the security of trading in promissory notes in electronic form is to consider whether provisions on the template and content of such documents should be introduced. Paradoxically, the non-existence of such requirements for the "analogue" form does not mean that it would be unnecessary to introduce any requirements as to electronic form in order to ensure that the trading in such documents is safe and secure.

3. Issues related to promissory notes in electronic form as evidence in civil and criminal proceedings and potential criminal activity involving trading in cheques and promissory notes in electronic form

While promissory notes in paper form are examined by judicial authorities in terms of the reliability of the document and its content, and in criminal proceedings often with the participation of experts in handwriting and the examination of documents, introduction of electronic form for promissory notes could create potential difficulties with respect to admission of evidence as such (whether the court could obtain a register/database of promissory notes), as well as specialist IT knowledge for verifying it. As suggested above, it is not clear whether the court or prosecutor could access the original of the promissory note or an electronic copy of it. It also seems that judicial and law enforcement authorities should have access (free of charge) to the register/depository of promissory notes.

It should also be pointed out that under Art. 310 §§ 1–2 of the Criminal Code, not only is forgery and alteration of promissory notes and cheques punishable (penalty of deprivation of liberty for 5–25 years), so is the very introduction of counterfeit documents into circulation, accepting them for such purposes, storing, transporting, transmitting, transferring, or assisting in their disposal or concealment. These offences are subject to a penalty of deprivation of liberty for 1–10 years. The parliament has also penalized actions consisting of preparations to commit such offences. Offences against the trading in cheques and promissory notes have thus been practically equated to offences against monetary assets.

Significantly, the very issuing of uncovered cheques is a criminal offence. Under Art. 61 of the Cheque Law, "Whoever issues a check without having the necessary funds at his disposal with the drawee, or disposes of the coverage after issuing the cheque, and the cheque is not paid as a result, shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years. If the perpetrator acts unintentionally, he shall be subject to a fine or the penalty of deprivation of liberty."

Therefore, the introduction of the option to issue cheques in electronic form could result in a hypothetical increase in the practice of forgery, introduction into circulation, or use of such documents in business activity.

		The Task Force analyzed the draft opinion of the MJ while pointing out that the potential threats to business activity resulting from the electronic form of cheques or promissory notes could be resolved through the use of distributed ledger technology (DLT). The system is based on duplication of electronic entries many times. This mechanism based on advanced cryptographic techniques causes an authenticated entry in the register on one of the nodes (copies of the register) to be automatically duplicated in the other copies once the correctness of the authentication is verified. **RECOMMENDATIONS FOR FURTHER ACTIVITIES:** **In cooperation with the MJ, the PBA (with the participation of the NACU) should undertake further work (e.g. in the form of a task force) on potential introduction of electronic form for promissory notes and cheques.**	
38	**THE LACK OF KNF LICENCES TO ISSUE ELECTRONIC MONEY (PONBPI)** There are no explicit criteria for obtaining permits for carrying out the activity of a national electronic money institution, which makes it impossible to render services based on electronic money outside of Poland with a Polish licence. It would be desirable to set minimum characteristics for payment services to qualify as electronic money, giving the right to apply for a licence to issue electronic money.	In the course of the Task Force's work, representatives of the KNF Office pointed out that the solutions currently being presented to the supervisory authority could not be deemed electronic money as they had typical characteristics of payment services. The lack of KNF licences to issue electronic money does not mean that the KNF has refused to license national electronic money institutions to issue electronic money. Directive 2009/110/EC of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions defines "electronic money" as electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions…, and which is accepted by a natural or legal person other than the electronic money issuer. In accordance with the definition of "electronic money" in the Payment Services Act, "electronic money" means monetary value stored electronically, including magnetically, which is issued, under an obligation to redeem it, to execute payment transactions, accepted by entities other than exclusively the issuer of electronic money. "Electronic storage" of electronic money, which is required by the definition, may imply different means of storage, both "magnetically", which is directly mentioned in both the European and Polish legislation, and "remotely at a server", which is indicated by the expression "including" in the definition of electronic money. However, it is essential that money transactions are executed by means of electronic money. This means that the payer paying for a product or service should transfer electronic money rather than scriptural money to the recipient (merchant). While referring to the approach of the supervisory authority to the essence of electronic money, it is necessary to refer to the practice of banks, questioned by the KNF, of issuing a "prepaid card" which provided access to funds collected in "technical accounts", with regard to which the banks applied the electronic money exemption from the ban on banks' opening and maintaining anonymous bank accounts. The KNF Office's analysis of products existing as electronic money on the financial market concluded that although they served for executing payment transactions, they did not constitute transactions with the use of electronic money, as the merchant accepted and received the payment in scriptural rather than electronic money. Because the funds collected in the accounts maintained for the respective cards were not electronic money, they could not meet the conditions for the statutory definition of electronic money mentioned above.	**Unjustified**

Under the position of the KNF stated on 10 July 2015 (DLB/DLB_WL1/703/1/1/2015), the key characteristics of electronic money pursuant to the definition of electronic money in the PSA are as follows:

1. Electronic money must not be equated with so-called "scriptural money" ("deposit", "cashless", "settlement", or "transactional"). Scriptural money is in essence a record in the accounting books of the bank (in the depositor's bank account), which confirms a liability of the bank to pay out a specific amount of money (currency notes); the liability may result from the crediting of the depositor's account with a specific amount, e.g. as a result of the payment of currency notes or a money transfer which may be related to the bank's assumption of a liability of a different bank (if the money transfer is made from a different bank). Unlike scriptural money, electronic money is not an accounting record expressing a liability/monetary claim, but, as mentioned in the definition, monetary value stored electronically, including magnetically. The storage must imply the possession of the instrument (e.g. a card, chip, or telephone with a relevant application) on which the values are stored and which serves for accessing the IT resources (server) where they are stored. As a rule, monetary values may be stored in two ways:
    - Directly on the instrument – payments are executed then by deducting monetary values (deleting records or magnetic impulses) from the instrument of the payer and recording them on the instrument of the merchant,
    - At a server – the instrument is used then to connect with the server and authorize the deduction of monetary values assigned to the instrument of the payer and assign them to the instrument of the merchant.
2. Electronic money means "monetary value" (rather than currency or accounting records) which is "issued". The issuance of the monetary value is in exchange for currency or scriptural money (i.e. payment in cash or by transfer) and implies an "obligation to redeem" the monetary value. The redemption is executed through a payment (in currency or scriptural money) equal in value to the issued electronic money in exchange for the refund (annulment) of the issued "monetary value". By issuing electronic money, the issuer sells monetary values in a way, i.e. transfers them to the purchaser in exchange for the payment of a specific monetary amount (in cash or by transfer), while it undertakes to redeem the monetary values from any holder.
3. Electronic money is issued to execute payment transactions. This means that monetary values issued for any other purpose or monetary values with which it is not possible to execute any payment transactions may not be deemed electronic money. Potential recipients of payments are not obliged to accept electronic money; this is dependent on the will and technical capabilities of the respective recipient of payments. The execution of a payment with the use of electronic money implies that the control over the "monetary value" is de facto transferred to the recipient of the payment, including the transfer of the claim against the electronic money issuer to redeem it. Therefore, the recipient of the payment (merchant) should have confidence above all with regard to the possibility to enforce the assumed claim to redeem the electronic money and the willingness to accept the risk related to the capacity of the issuer to redeem the money, and should also have technical solutions enabling it to take the monetary values,

which implies either deducting magnetic impulses expressing monetary value from the instrument (device) of the payer and recording it on the instrument (device) of the merchant, or ordering such action on the monetary values remotely stored at the server. To fulfil these conditions, the merchant must be bound with the electronic money issuer by a legal (contractual) relationship analogous to the one by which the payer is bound. As follows from the definition, electronic money may be referred to only if there are at least two acceptors of electronic money and neither of them is the issuer.

4. The use of electronic money, i.e. the execution of payments, may take place in a closed system, which involves the electronic money issuer and users (payers and merchants) i.e. entities issued electronic money by the issuer or willing to accept the electronic money issued by a specific issuer and having the necessary technical means to do so, i.e. to take control over the transferred monetary values recorded electronically and present them to the issuer for redemption, which is not possible without entering into a legal relationship with the issuer. This is the fundamental and practical difference between electronic money and bank money (scriptural money) which may be used as legal tender within the boundaries of a generally open payment system, where the execution and acceptance of payments using this tender are subject to maintaining a payment account with any provider (bank or payment institution). The closed system in which the trading in electronic money takes places means that the money may not be accepted outside of the system, i.e. an entity that is not a merchant of the electronic money issued by the respective issuer cannot obtain monetary values which express the money as a result of a payment made with the use of electronic money.

In the course of the Task Force's work, representatives of the KNF Office pointed out that the supervisory authority was open to entities interested in the issuance of electronic money in Poland and it is always possible to organize a working meeting to exchange opinions and views.

39

REQUIREMENTS FOR PAYMENT INSTITUTIONS TO COVER 80% OF OWN FUNDS WITH CASH AND CASH EQUIVALENTS (PONBPI)

It is not clearly determined how the requirement to cover 80% of own funds with cash and cash equivalents should be fulfilled, in particular if the entity applying for the permit has formerly carried out any activity. It would be desirable to repeal the requirement to cover own funds with cash and cash equivalents.

In the course of the Task Force's work, it was pointed out that the current requirements for payment institutions to cover 80% of their own funds with cash and cash equivalents create huge interpretation problems in the licensing process. As established by the Task Force, this problem will be taken up in the legislative process concerning the amendment of the Payment Services Act in relation to the implementation of PSD2. It was agreed that the requirement for payment institutions to cover their own funds with cash and cash equivalents will be repealed.

ACTIONS UNDERTAKEN:

The Ministry of Finance has included in the draft amendment of the Payment Services Act (as part of the implementation of PSD2) provisions repealing the requirement for payment institutions to cover 80% of their own funds with cash and cash equivalents.

RECOMMENDATIONS FOR FURTHER ACTIVITIES:

The Ministry of Finance should finalize its work on the amendment of the Payment Services Act (as part of the implementation of PSD2), which is to introduce provisions repealing the requirement for payment institutions to cover 80% of their own funds with cash and cash equivalents.

During removal

40

REQUIREMENTS CONCERNING THE OWN FUNDS OF PAYMENT INSTITUTIONS WHICH ISSUE PAYMENT CARDS (PONBPI)

It is currently required to increase the obligatory own funds of payment institutions by 5% of the total value of credits granted during the last year. It is proposed to reduce this requirement to a maximum of 0.5% of the credit amount.

In the course of the Task Force's work, it was pointed out that the requirement in Art. 76(4) PSA is calculated for the basic activity of the national payment institution (NPI), without taking into account the activity of granting payment credit. It was highlighted that Art. 76(5) PSA does not lay down an obligation to increase the value of the own funds permanently, but for a particular year specifies only the required amount of the own funds for payment credit granted during the last year, above the level resulting from the basic activity of the NPI. In the current wording, the requirement implies that an NPI that granted payment credit during its first year of activity will be obliged to allocate during the second year part of the own funds to increasing the own funds on this basis. In the following year, if maintaining the scale of granted payment credit at the same level, it will not be necessary to allocate increased own funds to maintaining the requirement concerning own funds. In the following year, the calculation will be renewed, but the surcharge calculated in this way should be maintained over the level of the funds resulting from the basic activity of the NPI and not over the total amount of the requirement with regard to the funds in the preceding year.

In relation to existing doubts in interpretation, the KNF Office proposed to amend Art. 76(5) PSA by modifying the method for calculating the required own funds for granted payment credits, without amending the coefficient of 5%. The proposed change would involve the calculation of 5% of the average balance of receivables at the end of each month from payment credit granted during the preceding financial year. It was agreed that the proposal would be taken into account in the draft amendment of the PSA as part of the implementation of PSD2.

ACTIONS UNDERTAKEN:

In the course of the legislative process concerning the draft Payment Services Act, the KNF Office proposed to change the method for calculating the additional requirement for the level of own funds maintained by payment institutions with regard to granted payment credit.

Proposed wording of Art. 76(5) of the Payment Services Act:

5. If the payment institution grants payment credits referred to in Art. 74(3), the requirement referred to in par. 4 shall be increased by 5% of the average balance of receivables at the end of each month from payment credits granted during the last financial year.

RECOMMENDATIONS FOR FURTHER ACTIVITIES:

In the course of the legislative process concerning the draft amendment of the Payment Services Act (as part of the implementation of PSD2), the MF should take into account the proposal to modify the method for calculating the additional requirement for the own funds maintained by payment institutions with regard to granted payment credits.

During removal

41

COMPLICATED RULES FOR DETERMINING PARTIES RELATED TO THE APPLICANT SEEKING A LICENCE TO OPERATE AS A NATIONAL PAYMENT INSTITUTION OR NATIONAL ELECTRONIC MONEY INSTITUTION (PONBPI)

It would be justified to introduce precise requirements for identifying related parties.

In the course of the Task Force's work, a representative of the PONBPI pointed out that when applying for a licence, payment institutions and electronic money institutions are required under the PSA to specify close links between the applicant and other parties (Art. 65(6) PSA and Art. 132b in relation to Art. 65(6) PSA). Due to the numerous and extended cross-references in the provisions on close links, there are numerous doubts in establishing the scope of the term in concrete situations. Art. 2(3) PSA, which defines close links for the purposes of the act, refers to the definition of close links in Art. 4(1)(15) of the Banking Act, which states in turn that close links mean:

- Close links as defined in Art. 4(1)(38) of Regulation No. 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms (CRR), and
- Being in a business relationship with another party based on permanent cooperation, in particular under a contract or contracts, which in the view of the KNF may significantly contribute to the deterioration of the financial situation of one of the parties.

Because with regard to granting a licence for rendering payment services where there are close links between given entities, Art. 11(7) PSD2 refers only to close links in the meaning of Art. 4(1)(38) CRR, without specifying additional grounds (as were introduced under Art. 4(1)(15)(b) Banking Act), the PONBPI proposes to limit the definition of close links only to close links in the meaning of Art. 4(1) CRR.

In the view of the KNF Office, from the supervisory point of view the requested change should not contribute to an increased risk of non-existent or limited control of the supervisory authority over an entity applying for a licence to render payment services or holding such a licence because such an entity has close links with another entity or entities.

ACTIONS UNDERTAKEN:

The PONBPI proposed to amend the Payment Services Act to introduce precise requirements for determining parties related to an applicant seeking a licence to carry out the activity of a national payment institution or national electronic money institution.

It is proposed that Art. 2(3) PSA should read as follows:

3) close links – close links as referred to in Art. 4(1)(38) of Regulation No. 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms (CRR).

RECOMMENDATIONS FOR FURTHER ACTIVITIES:

In the course of the legislative work on the draft amendment of the Payment Services Act (as part of the implementation of PSD2), the Ministry of Finance should take into account the proposed change with regard to the requirements to identify entities related to an applicant seeking a licence to carry out activity in the form of a national payment institution or national electronic money institution.

During removal

42	**THE INABILITY TO VERIFY ON THE KNF WEBSITE THE AUTHORIZATION OF EEA ENTITIES TO RENDER PAYMENT SERVICES IN POLAND ON THE BASIS OF NOTIFICATION (PONBPI)** It would be justified to introduce an obligation to publish on the KNF website a list of payment service providers from the European Economic Area (EEA) (entity, branch office, or agent) operating in Poland on the basis of notification.	In the course of the Task Force's work, representatives of the KNF Office pointed out that it is planned to create a list of payment service providers operating in Poland on the basis of notification and place it on the KNF website by the end of 2017. **RECOMMENDATIONS FOR FURTHER ACTIVITIES:** **The KNF Office should place on its website a list of payment service providers operating in Poland on the basis of notification.**	**During removal**
43	**EXCESSIVE REGULATIONS ON PAYMENT SCHEMES (PONBPI)** It cannot be determined unequivocally which entities are not subject to the regulations on payment schemes. It would be desirable to exclude from the definition of payment scheme any services not based on common principles for all participants.	In the course of the Task Force's work, representatives of the PONBPI demanded to clarify the scope of application of the provisions on payment schemes. It was pointed out that in the course of legislative work on the amendment of the Payment Services Act the PONBPI had drawn attention to the unavoidable interpretation problems as to the scope of application of the provisions. In particular, according to the PONBPI it is unclear what is the status of a payment service provider which is both the only issuer of a payment instrument and the only acquirer for transactions using the payment instrument it has issued. The PONBPI indicated that on the market there are many doubts as to whether an issuer of payment instruments which independently services merchants of the instrument is operating a payment scheme. As the provisions on payment schemes were devised on the basis of Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions, which covers only card-based payment services, the PONBPI proposed that the scope of the provisions on payment schemes should be as follows: • A system of payment cards is a payment scheme regardless of whether it is a tripartite system. • A set of rules for executing payment transactions, issuing and accepting payment instruments by payment service providers, and processing payment transactions executed with the use of payment instruments, other than a system of payment cards, is a payment scheme if more than one provider is the issuer or acquirer under the set of rules. In the opinion of the PONBPI, this change fully corresponds to the intended legislative objectives of the regulations. At the same time, it resolves a basic problem related to the provisions, i.e. it does not make a uniform payment service by a single provider into a payment scheme subject to supervision by the KNF. The representatives of the PONBPI pointed out that the current provisions cause supervisory duplication (by the KNF Office and the NBP) with regard to tripartite payment schemes. The proposal of the PONBPI was addressed by the representatives of the NBP, who pointed out that the adoption of a national supervisory solution with respect to all payment schemes does not result exclusively from the adjustment of Polish law to Regulation (EU) 2015/751 (the MIF Regulation), but from the need to adjust the competences of the central bank to the changing realities.	**Unjustified**

In essence, the policy adopted by the European Central Bank recommends that tripartite schemes should also be covered by system-based supervision (oversight) by the central banks of individual EU member states. Unlike prudential supervision, oversight-type supervision focuses on the matter (system, service, or infrastructure) rather than the entity rendering the particular service. In this sense, the realities of the Polish financial market made it necessary to regulate the functioning of the financial market which was basically left outside of the competences of the NBP, despite a close interest of the central bank in this sphere, i.e. the functioning of (scriptural) money in business activity, which is also of high social significance. It ensures the smooth functioning of the economy, which may be exposed to significant fluctuations without the correct confidence in money, both cash and scriptural money.

In terms of the concern for confidence in scriptural money, the tasks of the central bank include ensuring the effectiveness and security of the whole payment system, including all its components, i.e. payment systems, securities clearing systems, and payment instruments managed by payment schemes, so far not subject to system-based supervision. In the latter situation, it is irrelevant whether the instruments function under tripartite or four-party schemes. In this respect, the NBP does not support the argument that if a tripartite payment scheme (or strictly speaking the entity acting as a payment service provider) is de facto covered by the supervision of the KNF (or strictly the entity acting as a payment service provider), it is not justified to subject it to certain competences of the central bank. As indicated above, the two institutions focus on different aspects of the functioning of such a scheme, with the KNF focusing on the more institutional aspect and the NBP as a component of the payment system.

In short, to ensure that the NBP implements its basic objectives, it was necessary to regulate a matter which increasingly influences the functioning of money in business activity: its dematerialized form managed by schemes formerly outside of the competences of the NBP.

Addressing the arguments presented by the PONBPI, in the NBP's view the statement that there must be more than one provider functioning in a payment scheme cannot be accepted. Firstly, this is contrary to Art. 132zo(1)(1) PSA (as well as inconsistent with Regulation (EU) 2015/751 (the MIF Regulation)), which is based on the assumption that there is a specific type of tripartite payment scheme: the tripartite system of payment cards. These provisions of the PSA expressly state that an entity that operates a scheme independently and is its only issuer and acquirer forms a payment scheme for which there is no obligation to obtain a licence. Secondly, the expression "payment service providers" in light of the definition of a payment scheme in Art. 2(26a) PSA should be interpreted in the context of the binding rules related to the scheme, i.e. it refers to all providers (each provider independently) which render services on the basis of an instrument functioning under the scheme. It is incorrect to state that the rules must be issued for at least two payment service providers, or otherwise there is no payment scheme. For this reason, the NBP finds it incorrect to assume that only a scheme under which there are at least two providers of payment services is a payment scheme.

		Addressing the provision proposed by the PONBPI, the NBP points to the far-reaching inconsistency of the proposal in particular with the MIF Regulation. It assumes that a tripartite scheme of payment cards would constitute a payment scheme, but a similar scheme that issues instruments other than payment cards and card-based instruments would not. If this were the case the competences of the central bank with respect to e.g. a Polish payment scheme issuing exclusively payment cards, or, even more complicated, also issuing other "non-card" payment services, would raise doubts. Then, under the proposal, the functioning of the scheme would be subject to supervision by the NBP, if at all, only with regard to payment cards. It seems that such a solution would raise significant doubts in interpretation, which would de facto be inconsistent with the legislative intent, i.e. that the NBP should have appropriate competences to supervise the whole infrastructure of the Polish payment system. To summarize, the NBP finds it difficult to support the opinion that supervision by the NBP over tripartite payment schemes is a barrier to the development of innovative financial services. Above all, this supervision is marked by the lack of any licensing obligations or other "entry" requirements. With regard to the infrastructure, it is limited in practice to the capacity to issue binding recommendations during operations, but only if the NBP finds a violation of law or a failure to ensure effective and secure operation of the scheme. Therefore, it is difficult to agree with the thesis that this authority of the NBP constitutes a real barrier to entering or operating on the financial market. It will potentially be possible to diagnose whether the existence of supervisory authority of the President of the NBP with respect to tripartite payment schemes constitutes a barrier to the development of financial services once this supervision has been in place for some time. On the other hand, the NBP does not support the arguments raised by the PONBPI and recognizes the need to maintain in force the provisions regulating the NBP's competences with regard to the entire infrastructure of the payment system.	
44	**THE REQUIREMENT FOR USERS OF PAYMENT SERVICES TO REQUEST RECEIPT OF CORRESPONDENCE BY EMAIL (PONBPI)** Providing information by email requires users to submit a request, which is not adequate to the stage of development of electronic communications or required by EU law. It would be desirable to introduce a provision stating that it is sufficient for the user to provide an email address to communicate with the user by email (upon fulfilment of all the other requirements specified in the provisions on payment services).	In the course of the Task Force's work, it was pointed out that the current provisions of Art. 26(1) PSA requiring users of payment services to submit a specific request to receive correspondence by email (it is not sufficient to provide an email address) are not only a barrier to the development of the payment market, but are also completely inadequate to the modern stage of the development of electronic communications. In the era of the information society, email is a common tool for universal communications, used almost equally as traditional postal services. Furthermore, this solution is contrary to the PSD, which is a directive of full harmonization (Art. 86 PSD). Art. 41(1) PSD, implemented through Art. 26(1) PSA, does not provide for a requirement for users to submit any declaration to enable the provider to deliver information by email. What is more, the directive treats this method for delivering information as equivalent to, e.g., delivering a printout to the user (point 24 of the preamble). As established by the Task Force, this problem will be taken up in the legislative process concerning the amendment of the Payment Services Act in relation to the implementation of PSD2. It was agreed that the requirement for a user of payment services to submit a specific request to receive correspondence by email should be repealed.	**During removal**

		ACTIONS UNDERTAKEN: **In the draft amendment of the Payment Services Act (as part of the implementation of PSD2), the MF introduced provisions repealing the requirement for a user of payment services to submit a specific request to receive correspondence by email.** Proposed wording of Art. 26(1) of the Payment Services Act: *1. The provider shall be obliged to deliver to the user the information specified in Art. 27, Art. 29(1) and (5), Art. 31(1) and Art. 32(1) in paper form or on any other durable medium. The information should be formulated in an easily understandable way, in a clear and legible form.* **RECOMMENDATIONS FOR FURTHER ACTIVITIES:** **The MF should finalize its work on the draft amendment of the Payment Services Act (as part of the implementation of PSD2) to introduce provisions repealing the requirement for users of payment services to submit a specific request to receive correspondence by email.**	
45	**LIMITED POSSIBILITIES TO OFFER INNOVATIVE PAID CHANNELS OF COMMUNICATION TO USERS OF PAYMENT SERVICES (PONBPI)** The rigid interpretation of the provisions on informing customers limits the possibility to offer innovative paid channels of communication to users, in addition to free information methods. It would be desirable to specify a specific free communication minimum, without excluding fees for other methods of communication.	In the course of the Task Force's work, it was pointed out that this barrier refers in particular to Art. 17 PSA, which states that the provider may not charge users fees for delivering information required by the act, in relation to concluding specific contracts with users (framework contract or payment account contract). This article then mentions three situations in which such fees may nonetheless be charged. The final section states that if the provider is authorized to charge fees for delivering information, the fees must not exceed the costs incurred by the provider in relation to the delivery (par. 3). The PONBPI pointed out that an incorrect interpretation of these provisions may hinder the development of innovative channels of communication and limit the offering of various kinds of additional services through these channels, when certain information may be transferred to customers who are also users of payment services. In the opinion of the PONBPI, the incorrect interpretation of these provisions may lead to the conclusion that a payment service provider must not charge fees exceeding the costs incurred by the provider for delivering information other than the information covered by the Payment Services Act. The PONBPI takes the position that such interpretation does not favour the development of FinTech services and deprives consumers of the possibility of accessing additional innovative services and channels of communication with a wide range of service providers. As part of the implementation of PSD2, the PONBPI prepared a legislative proposal to amend Art. 17 PSA accordingly. The President of the OCCP did not agree with the arguments and proposals of the PONBPI. Above all, the OCCP is of the opinion that there is no basis to claim that these provisions of the PSA could limit the charging of fees for delivering information outside the area referring to payment services. The act specifies its scope of application: it refers to payment services as defined in the act, while Chapter II, referred to here, is titled "Information obligations in the rendering of payment services". The wording of Art. 17 PSA seems to resolve completely the doubts raised, as it clearly refers to fees incurred in relation to information obligations arising from the rendering of payment services.	**Not removed**

		The change proposed by the PONBPI would specify that Art. 17 PSA does not exclude the possibility for payment service providers charging users fees for rendering services other than payment services, including additional services excluded from Chapter II of the act. In the opinion of the OCCP, it is not justified to specify this in more detail, for the aforementioned reasons. The OCCP points out that PSD2 is of a maximal nature (in accordance with Art. 107), which implies that the national legislation cannot modify the scope of protection provided by the directive to users of payment services in this respect.	
46	**MODIFYING CONTRACTS FOR PAYMENT SERVICES (PONBPI)** Under Civil Code Art. 385^3, in the event of any doubts it is assumed that unlawful contractual provisions include in particular those that authorize the consumer's contracting party to modify the contract unilaterally, without any significant reasons stated in the contract. While the rule conditioning the possibility of modifying a framework contract on the occurrence of a significant reason stated in the contract as such does not raise any reservations, serious doubts arise in practice concerning the acceptable method for formulating significant reasons for amending the contract in template contracts. Verification of provisions concerning the authorization to make changes to contracts with consumers is often the subject of oversight and proceedings by the President of the OCCP. In the course of such review, the President of the OCCP sometimes alleges that businesses have not stated such provisions with sufficient precision (while pointing out that the provisions give businesses too much latitude to modify the template contract), also with respect to highly extensive clauses providing quite detailed descriptions of the circumstances regarded as significant reasons. This situation results in a state of legal uncertainty among businesses and may discourage or hinder innovative entities from adapting their activity to current trends and market standards, or offering innovative services which may necessarily be exposed to a larger extent to the necessity to make corrections to the way they are rendered. The possibility to modify contracts is particularly important for entities rendering services in swiftly developing sectors such as FinTech.	In the course of the Task Force's work, it was pointed out that this barrier referred to the scope of the providers' right to unilaterally modify contracts with users under the Payment Services Act. In the opinion of the OCCP, this demand seems to have a wider scope than just contracts under the Payment Services Act, as it also refers to other contracts concluded by FinTech businesses with consumers where it would be desirable to relax the rules for unilateral modification. The OCCP claims that even if market participants have doubts as to the interpretation of this provision, this also applies (perhaps primarily) to business from sectors other than FinTech whose practice involves the conclusion of long-term contracts which may eventually need to be modified unilaterally. In the OCCP's view, it is doubtful whether it is justified in terms of the development of FinTech technologies to give an advantage only to this section of the market. Nor is it clear why the recommendations should cover exclusively contract provisions raising doubts only in terms of one of the "grey clauses" listed in Art. 385^3(10) CC. The wording of the Civil Code and Directive 93/13/EC, implemented through the Civil Code, does not provide a basis to single out this point in the catalogue of "grey clauses" at the expense of the "insufficient interpretation" of other examples of unlawful clauses. Irrespective of the above, the OCCP believes it should be pointed out that as a rule (excluding merger control matters) the President of the OCCP does not undertake preventive actions (ex ante), but, in a specific administrative proceeding, conducts a subsequent (ex post) evaluation of actions by businesses. Therefore, for the President of the OCCP to devise operational guidelines for businesses with regard to potential and future factual states may cause a breakdown in the systemic coherence of the body's operation. In consequence, these doubts do not warrant accepting the demand that the President of the OCCP should issue recommendations in this form. Furthermore, the OCCP is of the opinion that it is necessary to pay attention to the rich body of decisions, by both the President of the OCCP and the courts, which may help remove the expressed doubts in interpretation.	**Not removed**

	To remove this barrier, it is not absolutely necessary to amend the provisions, but to work out a model method for applying the provisions on unlawful contractual provisions to the extent the provisions refer to modification of template contracts. Therefore, the OCCP is requested to formulate, following consultations with interested parties, recommendations specifying the principles for proper wording of modification clauses with regard to specification of the catalogue of significant reasons justifying the possibility of modifying contracts with customers while they are in force. In particular, the recommendations should be devised taking into account the necessity to ensure a compromise between the appropriate level of protection of consumers' rights and the possibility for businesses to adjust the services they offer to the changing technological, legal and market circumstances, while ensuring the quality and security of their services.		

Capital Market Sub-Group

No.	Name and description of barrier (the entity raising it)	Arrangements/actions taken/recommendations	Status of barrier[1] (removed, during removal, not removed, unjustified, beyond the scope of work)
47	**IMPRECISE REGULATIONS ON PROFESSIONAL SECRECY IN THE OUTSOURCING OF ACTIVITIES BY INVESTMENT FIRMS** (CBH) In practice, if services are outsourced to IT and technological companies of the FinTech sector, it may often be necessary to outsource the processing of data covered by the data protection regime and the provisions on professional secrecy under the Trading in Financial Instruments Act. These regimes overlap. It should be pointed out that the catalogue of data which fall under professional secrecy is open and extensive and covers such data as personal data. The current imprecise wording of the provisions on professional secrecy does not provide for sufficient certainty as to whether the outsourcing contract permits outsourcing of the processing of such data to a third party. To a large extent, this limits the possibility to use innovative FinTech solutions offered by IT companies, mostly in the form of "software as a service".	In the course of the Task Force's work, it was established that it would be justified to clarify Art. 150(1)(17) of the Trading in Financial Instruments Act to remove any doubts in interpretation. **ACTIONS UNDERTAKEN:** **In cooperation with the KNF Office, the CBH proposed changes to the provisions on professional secrecy when certain activities are outsourced by investment firms.** Art. 150(1)(17) of the Trading in Financial Instruments Act would read as follows: *17) by an investment firm or custodian bank in relation to the conclusion or performance of a contract related to carrying out brokerage or custodian activity, including a contract referred to in Art. 81a(1) or Art. 79(1), if the transfer of such information is necessary to conclude or perform the contract.* **RECOMMENDATIONS FOR FURTHER ACTIVITIES:** **The MF should take into account the proposed changes to the provisions on professional secrecy under the amendment of the Trading in Financial Instruments Act.**	During removal

[8] The statuses of the identified barriers are defined as follows: Removed – a barrier has been removed completely, no recommendations for further activities; During removal – certain activities have already been undertaken and/or recommendations for further activities have been formulated; Not removed – a barrier is related to the FinTech field, but no acceptable solution has been worked out in the course of the Task Force's activities; Unjustified – a barrier does not exist; Beyond the scope of work – a barrier does not refer to the FinTech field.

48	**AMBIGUITY OF THE REGULATIONS ON OUTSOURCING BY INVESTMENT FUND COMPANIES (IFC) WITH REGARD TO OUTSOURCING ADMINISTRATIVE AND IT SUPPORT WHICH DOES NOT INVOLVE ACCESS TO INFORMATION FALLING UNDER PROFESSIONAL SECRECY (FINTECH POLAND, CFAM)** As described in Art. 45a of the Act on Investment Funds and Management of Alternative Investment Funds (IFMAIFA), outsourcing should involve a practice in which investment fund companies contract certain activities within their regulated activity to third parties. It should be emphasized that the legislature provided such solutions for both banks and insurance companies, as it is obviously justified to ensure administrative supervision over this area. Other activities (not falling within regulated activity) should not be supervised by the administration, as the provisions of the Civil Code on subcontracting are a sufficient source of protection (Art. 474 CC). However, while recognizing that it would be justified for the supervisory authority to supervise activities involving transfer of or access to information falling under professional secrecy, it is proposed to add an additional exemption to Art. 45a(8) IFMAIFA, i.e. to exclude administrative or IT services that do not involve access to any information falling under professional secrecy.	The KNF Office does not support this demand. The current wording of the national provisions is determined by EU law. It should be emphasized that the exemption mentioned in Art. 45a(8) IFMAIFA is designed to implement the UCITS Directive in Polish law. Amending this provision of the act to extend the possibilities for outsourcing contracts to be deemed insignificant could raise serious doubts as to consistency with EU law. Furthermore, it should be pointed out that the listing of contracts in Art. 45a(8) is only indicative, and does not exclude the possibility that these exemptions will apply to other contracts of equally little importance for the activity of investment fund companies. Additionally, it should be noted that outsourcing of activities carried out by investment fund companies should be treated under a restrictive approach, guided by the necessity to ensure stable operation of IFCs themselves and protection of the interests of participants in investment funds and customers of IFCs (bearing in mind the limited liability under contracts of this type, as specified in the act).	**Not removed**
49	**ACTIVITY OF AUTHORIZED ADVISERS IN THE PROCESS OF OFFERING FINANCIAL INSTRUMENTS (CPI)** It should be expressly specified which activities undertaken in the process of private offering of financial instruments “with the involvement” of authorized advisers are advisory services not requiring the authorized advisers to hold a brokerage licence, and which are activities of offering financial instruments as referred to in Art. 69(2)(6) and Art. 72 of the Trading in Financial Instruments Act.	The KNF website includes the position of 20 January 2016 (DPP/WOPII/023/1110/2/15/ŁK/16) directed to the Council of Authorized Advisers, explaining in detail the scope of activities constituting the activity of offering in the meaning of the Trading in Financial Instruments Act. Therefore, this demand is not justified.	**Unjustified**

	It would be desirable to specify, in the course of amending the provisions or through express interpretation, the role and entitlements of authorized advisers in the process of offering financial instruments.		
50	**MATERIAL FORM OF FINANCIAL INSTRUMENTS (CDB)** Excluding shares admitted to public trading, shares of Polish joint-stock companies have the form of a material document. This limitation makes it impossible to trade and execute other transactions in these instruments in electronic form. It would be desirable to dematerialize the shares by amending the Commercial Companies Code.	In the course of the Task Force's work, it was pointed out that the MJ was working on an amendment of the CCC to dematerialize the form of shares issued by Polish joint-stock companies. On 21–22 June 2017, a conference was held to agree on the draft amendment of the CCC, with the participation of the entities (both governmental and social) which submitted remarks on the draft. The following version of the draft was later prepared to reflect the points agreed during the conference. **RECOMMENDATIONS FOR FURTHER ACTIVITIES:** **The MED should monitor the MJ's legislative work on amending the CCC in terms of the introduction of a solution to dematerialize the form of shares issued by Polish joint-stock companies.**	**During removal**
51	**EXCESSIVE REQUIREMENTS FOR FOUNDING JOINT-STOCK COMPANIES, THE IMPOSSIBILITY TO REGISTER A COMPANY ELECTRONICALLY (CDB)** The extensive regulatory environment specified in the CCC does not address the needs for organizing business activity by startups. In order to set up a company, it is necessary to complete a number of formalities based on paper documents, as well as contact the state administration in person. It would be desirable to introduce a solution analogous to those used in the s-24 system for setting up limited-liability companies, registered partnerships and limited partnerships by electronic means. It would be justified to implement the project of a simple joint-stock company as devised by the MED.	In the course of the Task Force's work, it was pointed out that the MED is working on provisions regulating the so-called simple joint-stock company (SJSC), a new business form allowing for quicker and easier development of innovative startups. The SJSC will combine the advantages of limited-liability companies and joint-stock companies. In the 4th quarter of 2017 it is planned to conduct public consultations on the draft act introducing the SJSC, in particular with the engagement of the startup and business community. **RECOMMENDATIONS FOR FURTHER ACTIVITIES:** **The MJ should finalize the legislative process on the project of a simple joint-stock company.**	**During removal**
52	**PUBLIC MARKET REQUIREMENT (CDB)** The provisions on public offerings may make it impossible to maintain electronic registers of financial instruments (e.g. non-public shares) due to the regulatory requirements specified for public offerings. It would be desirable to amend Art. 3 of the Public Offerings Act so that the entry of securities in distributed registers (DLT) with extensive	In the opinion of the KNF Office, the Act on Public Offerings and Conditions for Introduction of Financial Instruments into an Organized System of Trading and on Public Companies does not hinder, as a rule, the maintenance of electronic registers of financial instruments, including distributed registers (distributed ledger technology) or the execution of potential transactions using blockchain technology. On the other hand, the Public Offerings Act regulates the requirements related to conducting public offerings (an offering by the issuer with regard to a new issue of shares or a sale offering by an existing shareholder), e.g. by introducing an obligation to draw up a prospectus or information memorandum	**Unjustified**

	(however controlled) availability does not burden this solution with requirements specific to public trading.	The act also regulates the exemptions from these obligations. As of now, a public offering of securities may be conducted on the basis of the Public Offerings Act arising from implementation of Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC. The exemptions from the obligation to draw up a prospectus and the exemptions from the application of the directive are specified in the directive, which is uniformly applied in all the member states. It seems unjustified and pointless to introduce exemptions other than those specified in the EU provisions.	
53	**RIGID BUSINESS FORMS FOR LICENSED FINANCIAL MARKET INSTITUTIONS (CDB)** The justified limitation of the possibility to carry out certain types of activity by supervised entities is supported by a number of excessive organizational and operational requirements and limitations. These requirements impose a rigid technological infrastructure preventing for example the use of solutions based on distributed registers (DLT). It would be desirable to amend the provisions on public trading in financial instruments and the analogous regulations concerning other instruments which do not have the form of a document so that certain activities constituting licensed activity could be outsourced to technologically specialized entities under the full control of the licensed entity or under the control of a consortium of such entities.	During the meetings of the Task Force, it was pointed out that the European Securities and Markets Authority (ESMA) issued a report on DLT on 7 February 2017. The report contains conclusions from an analysis of the use of DLT in the activity of financial institutions and consideration of regulatory matters in comparison with the specifics of the technology. One of the basic conclusions from the report is that in certain aspects where the regulatory requirements make the existing practical use of DLT unsuited to the realities in which licensed financial institutions function, it will be necessary to adapt the model of the implemented DLT to the regulatory requirements, and not the other way round. In the course of the Task Force's work, it was also pointed out that the MDA is preparing a research programme dedicated to emerging transactional and financial technologies under the INFOSTRATEG Programme. Under that programme, the MDA plans to support the building of an ecosystem of transactional innovations in Poland by allocating funds to building secure testing environments in which transactional (blockchain/DLT) and financial innovations could be tested. This virtual sandbox, i.e. an IT platform serving to aggregate large datasets and programming interfaces (APIs) for startups, large companies of the FinTech sector and banks, will be a source of hard data which may potentially be used by the KNF Office in the formulation of recommendations and guidelines. The programming interfaces collected in the virtual sandbox will constitute a point of contact for market participants interested in financial innovations. **RECOMMENDATIONS FOR FURTHER ACTIVITIES:** **The Ministry of Digital Affairs should implement the research programme dedicated to emerging transactional and financial technologies under the INFOSTRATEG Programme.**	During removal
54	**THE REQUIREMENT TO USE HANDWRITTEN SIGNATURES IN PROCESSES RELATED TO DEMATERIALIZED SECURITIES AND FOR HANDLING OPERATIONS BY PUBLIC COMPANIES (KDPW)**	In the course of the Task Force's work, it was pointed out that the current requirements to use handwritten signatures in processes related to dematerialized securities and for handling operations by public companies are very burdensome for customers and it would be justified to amend the CCC accordingly. In view of the above, KDPW proposed changes to the provisions which were consulted with the KNF Office.	During removal

Currently, for example, Art. 437 CCC requires that subscription orders for shares be made in paper form, on the form prepared by the company in a minimum of two copies for each subscriber. The subscription order must be signed by both the subscriber and the company. These requirements significantly prolong these processes and also prevent the automation of handling of the processes. It would be desirable to amend the CCC in this respect. Introducing the option of adapting the document form would make it possible to automate the handling of these processes.

ACTIONS UNDERTAKEN:

In cooperation with the KNF Office, KDPW proposed legislative changes to the CCC to enable the automation of processes concerning dematerialized securities and the handling of operations conducted by public companies.

Proposed amendment of Art. 347 of the Commercial Companies Code of 15 June 2000 (Journal of Laws 2016 item 1578, as amended):

Art. 437. §1. A subscription order for shares shall be made in writing, on a form prepared by the company, in a minimum of two originals per subscriber, one for the subscriber and one for the company. A subscription order for shares may be made in electronic form. A subscription order for shares in electronic form must be submitted through a teleinformatic system and accompanied by a qualified electronic signature or advanced electronic signature. The subscription order for shares shall be submitted to the company or a person authorized by the company within the period specified in the announcement or prospectus or in the registered letter referred to in Art. 434 §3.

§2. The subscription order must contain:
1) the number and type of subscribed shares;

2) the amount of the payment made for the shares;

3) the consent of the subscriber to the wording of the statute, if the subscriber is not a shareholder of the company;

4) the signatures of the subscriber and the company or other party authorized to accept subscription orders and payments for shares;

5) the address of the party authorized to accept subscription orders and payments for shares.

§2[1] If the subscription order for shares is placed in electronic form, §2(4) shall not apply.

§3. Acceptance of the subscription order may be certified by a seal or mechanically reproduced signature. Acceptance of a subscription order in electronic form must be certified by the electronic seal of the company or other party authorized to accept subscription orders and payments for shares, or by an advanced or qualified electronic signature of the party authorized to accept subscription orders and payments for shares.

§4. A subscription order for shares placed under a condition or subject to a date shall be invalid.

§5. A statement by a subscriber which does not contain all the data referred to in §2 shall be invalid. If the subscription order for shares is placed in electronic form, a statement by the subscriber which does not contain all the data referred to in §2(1)–(3) and (5) shall be invalid. Any additional provisions not specified in the form shall have no legal effect.

The proposed changes will make it possible to place subscription orders for shares using the electronic form of a legal act—with a qualified electronic signature. A statement of will in electronic form is equivalent to making a statement of will in writing, while the use of a qualified electronic signature will guarantee the security of commerce.

		RECOMMENDATIONS FOR FURTHER ACTIVITIES: **In cooperation with the MJ, the MF should undertake legislative actions to introduce the proposed change to the CCC in order to enable the automation of processes involving dematerialized securities and the handling of operations by public companies.**	
55	**THE IMPOSSIBILITY TO COLLECTIVELY EXTRACT DATA FROM THE KRS DATABASE (KDPW)** This barrier hinders access to the National Court Register (KRS) database maintained by the MJ, which makes it impossible to automatically monitor the consistency of data of parties for which services are rendered, e.g. in terms of assigning and maintaining legal entity identifiers (LEIs). It would be desirable to amend the National Court Register Act to enable such entities as KDPW to extract a file with selected or complete data from the KRS database.	As established by the Task Force, it is justified to introduce a solution enabling market participants to gain remote access to the information contained in the KRS database maintained by the MJ. Thus KDPW proposed changes to the provisions which were consulted with the KNF Office. Additionally, it was pointed out that the limited availability of the KRS database is a frequent problem. **ACTIONS UNDERTAKEN:** **In cooperation with the KNF Office, KDPW proposed legislative changes to amend the National Court Register Act to enable market participants to gain remote access to the information contained in the KRS database.** The proposal refers to amendment of the National Court Register Act of 20 August 1997 (Journal of Laws 2017 item 700), by adding par. 3b and amending par. 4 in Art. 4 and amending Art. 5: *Art. 5.* *3b. The Information Centre shall make available current information on entities entered in the Register and a list of documents in the catalogue in a manner enabling automatic collection of the data, upon prior arrangement with the Minister of Justice of the conditions under which they should be made available.* *4. The Information Centre shall charge fees for providing information, issuing excerpts, copies or certificates from the Register, and making available copies of documents in the catalogue, as well as making data available in the manner referred to in par. 3b. The fees shall constitute income of the state budget.* *Art. 5. The State Treasury, entities rendering services involving assignment of identifiers to legal entities (LEI codes) and other code designations whose assignment is provided for by law, as well as state institutions which do not carry out economic activity, shall not incur the fees mentioned in Art. 4(4).* Remote access to information about entities entered in the register will make it possible for interested institutions to exercise automatic monitoring of the consistency of the data appearing in the register with the information in their possession. The availability of this functionality will be particularly useful in the context of the activity of institutions requiring ongoing and swift access to the registration data of their counterparties, but the overriding objective will be to optimize processes of document control. Such ongoing access to registration data may prove particularly useful for institutions with extensive databases requiring continual, labour-intensive updating. In the context of the activity carried out by KDPW, monitoring of the data in its possession will apply to members of KDPW, participants in the compensation system, and entities assigned LEI codes. Automatic access to the data in the register will decrease the number of documents that must be delivered by counterparties in the form of printouts.	**During removal**

		By shortening the working time devoted to analysis and verification of data in the register, the costs will significantly decrease for the institutions interested in such access and controlled entities, as such entities will not have to deliver updated documentation. **RECOMMENDATIONS FOR FURTHER ACTIVITIES:** **In cooperation with the MJ, the MED should undertake legislative actions to introduce the proposed change to the National Court Register Act to enable market participants to gain remote access to information contained in the KRS database.** **The MED should submit a proposal to the MJ to increase the capacity of the KRS database to enable processing of a higher number of queries.**	
56	**THE IMPOSSIBILITY TO ISSUE/RECORD THE VOLUME OF DEBT SECURITIES ISSUED IN THE NATIONAL JURISDICTION IN SECURITIES ACCOUNTS AND JOINT ACCOUNTS (KDPW)** This barrier involves the impossibility to register debt securities by value and, in consequence, to register their volume by value in securities accounts/joint accounts. The changes would enhance the competitiveness of the Polish market for foreign banks and investment firms and allow payments of benefits from debt securities to be handled more efficiently. It would be desirable to amend the Trading in Financial Instruments Act in this respect, and possibly the Bonds Act.	In the view of the KNF Office, there are currently no provisions preventing KDPW from applying the so-called value-based formula when registering the issuance of debt securities as a supplementary approach to the obligation for the depository to register debt securities in the quantity-based formula. Use of the value-based formula is also provided for in the new version of the Rules and Regulations of KDPW S.A. of 4 April 2017. In the course of the Task Force's work, it was agreed that it would not be justified to introduce the proposed changes to the Trading in Financial Instruments Act.	**Unjustified**
57	**PUBLIC OFFERING NOT REQUIRING A PROSPECTUS (CPI)** As of now, it is not required to prepare a prospectus in the case of a public offer of securities as a result of which the expected gross proceeds of the issuer or seller in the territory of the European Union do not exceed EUR 100,000 and do not reach or exceed that amount including the proceeds the issuer or seller intended to gain from such public offers of the securities during the last 12 months.	In the course of the Task Force's work, it was agreed that the KNF Office would propose changes to the Public Offerings Act to simplify the procedure for placing offerings of up to EUR 1 million. The change will make it possible to increase the value of investments made using crowdfunding, without the need to impose excessive burdens on entities seeking financing under this approach (see Annex No. 2 to the Report). A representative of the MF pointed out that it would be possible to introduce changes to the provisions as part of the implementation of MiFID II. **ACTIONS UNDERTAKEN:** **The KNF Office proposed a preliminary version of amendments to the Public Offerings Act to simplify the procedure for placing offerings of up to EUR 1,000,000.**	**During removal**

Experience shows that the costs of preparing a prospectus and the required intermediation by an investment firm discourage a large number of businesses from raising financing by means of a public offering. Furthermore, investment firms are often not interested in acting as agents on low-value public offerings.

In accordance with Art. 3(2)(e) of the Prospectus Directive, offers of securities with a total value of up to EUR 100,000 are not subject to the prospectus obligation. However, the member states are free to introduce a further exemption of up to EUR 5,000,000, as mentioned in Art. 1(2)(h).

These provisions constitute a specific barrier to the development of crowdinvesting in Poland.

It would be desirable to increase the value threshold for public offerings above which the prospectus obligation does arise. It should be pointed out that work is underway on an EU regulation to set the threshold at EUR 1,000,000.

Act on Public Offerings and Conditions for Introduction of Financial Instruments into an Organized System of Trading and on Public Companies of 29 July 2005

In Art. 7, a new par. 8a is added as follows:

8a. Making a prospectus available to the public is not required, provided that a document is made available containing at least essential information about the issuer of the securities, conditions and rules of the offer, with an indication of the securities being offered, the use of the proceeds, significant risk factors, and the issuer's declaration of responsibility for the information in the document, in the case of a public offer where the issuer's or selling securities holder's expected gross consideration, within the EU, calculated according to the issuing price or selling price at the setting date, is not less than EUR 100,000 and less than EUR 1,000,000, and where such consideration together with the consideration the issuer or the selling securities holder expected to receive from the same kind of offers of the same kind of securities over the period of the preceding 12 months does not reach or exceed this amount. The declaration by the issuer shall contain a statement that, to the best of its knowledge and having taken all reasonable care to ensure that such is the case, the information contained in the document is true, reliable and in accordance with the facts.

Art. 7(9) shall read as follows:

9. Making a prospectus available to the public is not required, provided that a memorandum referred to in Art. 41 below is made available, in the case of a public offer where the issuer's or selling securities holder's expected gross consideration, within the EU, calculated according to the issuing price or selling price at the setting date, is not less than EUR 1,000,000 and less than EUR 2,500,000, and where such consideration together with the consideration the issuer or the selling securities holder expected to receive from the same kind of offers of the same kind of securities over the period of the preceding 12 months does not reach or exceed this amount.

Art. 7(16) shall read as follows:

16. In the case of a public offer and/or admission to trading on a regulated market referred to in paragraphs 2–15 above, the issuer and/or selling securities holder may make a prospectus available to the public. In such case an information memorandum shall not be made available. In the case of a public offer and/or admission to trading on a regulated market referred to in par. 4(5) and par. 8a, the issuer or selling securities holder may also make an information memorandum available to the public.

In Art. 53, after par. 9b, par. 9c shall be added as follows:

9c. Paragraphs 8–9a shall not apply in the case of a public offer referred to in Art. 7(4)(5) and Art. 7(8a); however, the condition specified in par. 7 is considered to be fulfilled if the issuer and/or selling securities holder submits to the Authority, before the expected beginning of the promotional activity at the latest, the timetable for its conduct with an indication of the entities engaged in carrying out the promotional activity, the kind and amount of securities being offered, and the issuer's or selling securities holder's expected gross consideration.

		Trading in Financial Instruments Act of 29 July 2005 Art. 19(9)(2) shall read as follows: *2) conducting a public offer, subscription and/or selling based on that offering, except for a public offer referred to in Art. 7(4)(4), 7(4)(5), 7(8) or 7(8a) of the Public Offering Act, shall require the intermediation of an investment firm.* **RECOMMENDATIONS FOR FURTHER ACTIVITIES:** **The MF should take into account the legislative proposal to amend the Trading in Financial Instruments Act to introduce provisions simplifying the procedure for placing offerings of up to EUR 1 million.**	
58	**IMPOSSIBILITY TO PERFORM FULL NETTING (KDPW)** This barrier makes it more difficult to register securities purchased as a result of a transaction entered into in organized trading and cleared by a central counterparty (CCP) on a net basis. Art. 7(5) of the Trading in Financial Instruments Act is interpreted as a necessity to reflect transactions of purchasing and selling securities in securities accounts. This generates significant costs for the participants in terms of identification of the purchasing and selling transactions as a result of the netting performed by the CCP. It would be desirable to amend Art. 7(5) of the Trading in Financial Instruments Act in this respect.	In the course of the Task Force's work, a representative of KDPW stated that this problem required changes to IT systems by KDPW and it could not be resolved soon. It was agreed that no further activities would be undertaken by the Task Force.	**Not removed**
59	**TECHNICAL PROBLEMS RELATED TO SERVICING OF THE ESIT (CFAM)** The Electronic System for Information Transmission (ESIT) is a reporting system which is difficult to operate and requires labour-intensive servicing and excessive layout by IFCs. It would be desirable to use flexible reporting solutions, e.g. analogous to those used for reporting to the NBP (.xls files that are easy to edit and are transparent). Furthermore, information on any errors in arithmetic formulas should be generated by the portal in real time, during the uploading of files.	In the course of the Task Force's work, a representative of the CFAM presented the identified problems related to the functioning of the ESIT. It was agreed that the proposed changes with regard to the functioning of the ESIT are acceptable in legal terms and would be evaluated by the KNF Office in technical terms during the planned modification of the system. **ACTIONS UNDERTAKEN:** **The CFAM listed the observed technical problems related to the servicing of the ESIT.** Identified problems related to the ESIT: 1. A nuisance related to the fact that every time a text is copied, it is necessary to copy it first to the Notepad and the specific content may be pasted to the ESIT afterwards. 2. The system does not allow adding more than one entity with the same REGON to the database; an error notification appears when sending reports (e.g. quarterly reports). The obligation covers both funds and	**During removal**

sub-funds. For funds, the field is completed when the respective file is identified. Unfortunately, this is not the case with regard to sub-funds, and the field is a mandatory field (i.e. it is not possible to send the report if the field is blank). This makes it necessary to complete the field by hand after identifying the entity in the system and before sending the report, which significantly prolongs the time devoted to the task. This applies to forms FIO-Q, SFIO-Q, and FIZ-Q-E.

3. In the case of certain forms, the system requires attachment of a .pdf file to fields where it should be necessary/sufficient to provide content, which results in a burdensome necessity to generate .pdf files with the content that must be entered in the respective field, e.g.:
    - Form TFI-IB-OD, field "Qualifications and professional experience"
    - Form TFI-IB-OD, field "Qualifications and professional experience"
    - Form TFI-IB-D, fields "Qualifications and professional experience" and "justification for concluding/terminating the contract"
    - Form TFI-IB-CZD, field "Qualifications and professional experience".
4. Form TFI-WZA does not allow printing only the content of the completed folders. Instead, the printout contains 12 forms stating the participation of the funds managed by the IFC in the general meetings of the companies, which mostly contain blank fields.
5. Annual reports—it is mandatory to complete the fields on the cover page indicating the financial year the report refers to and the preceding financial year. An error occurs when transmitting the report of an entity for its first financial year, when there is no preceding financial year. This applies to forms FIO-R and FIZ-R-E.
6. Problems arise when printing forms in .pdf format; such a printout usually contains no framing of individual cells (fields) of the form.
7. It is not possible to fit the printed form to the page. It is only possible to shrink the printout on a percentage basis so that it fits the size of the page, but then the text becomes very small and illegible, particularly when printing out the reports. Scanning such a printout to upload the report to the website makes the text even more illegible.
8. The discrepancy related to the fact that §24 of the current Rules and Regulations of the ESIT (of 14 July 2016) allows for transmitting only files saved in format .rtf, .pdf or .csv through the system, while omitting the .xml format. However, the KNF Office expects supervised entities to submit files in the .xml format (in relation to MAIF), as well as .xls or .xlsx (according to letters sent to the entities). The Regulation of the MEDF of 27 December 2016 on the Technical Means and Conditions for Submitting Certain Information by Entities Supervised by the Polish Financial Supervision Authority (Journal of Laws 2016 item 2288) also allows files to be transmitted in.xml format.

RECOMMENDATIONS FOR FURTHER ACTIVITIES:

The KNF Office should analyze the changes proposed by the CFAM in the technical terms and their potential introduction as part of the planned modification of the ESIT.

60

THE OBLIGATION TO CONCLUDE CONTRACTS FOR IPAS/IPSAS AND EPSS IN PAPER FORM AND TRANSFER PAPER DOCUMENTS (CFAM)

It is now necessary to conclude contracts in paper form, including the handwritten signature of the customer (e.g. IPA/IPSA contracts). It is necessary to review the legislation in this respect and abandon the necessity to conclude contracts in paper form if the customer consents. It should be possible to conclude electronic contracts under accounts with confirmed identity or using a trusted ePUAP profile to sign the contract. Generally, it is necessary to abandon the necessity to use paper documents whenever possible (e.g. by replacing paper-based forms IKE-1 and IKE-2 and the EPS questionnaire with electronic documents in all financial institutions, and switching for example to e-declarations—each financial institution must now complete the documents manually and then the next institution must enter them again in its system).

The KNF Office supports the demand to deformalize the method for concluding contracts for IPAs/IPSAs, the methods of communication between participants in EPSs, employers operating EPSs, and financial institutions servicing EPSs, as well as between holders of IPAs/IPSAs and financial institutions maintaining IPAs/IPSAs, and between financial institutions maintaining IPAs/IPSAs and the heads of the tax offices. In the opinion of the KNF Office, the amendments to the Employee Pension Schemes Act of 20 April 2004 and the Act on Individual Pension Accounts and Individual Pension Security Accounts of 20 April 2004 should allow for the possibility of transmitting information on EPS, IPA or IPSA in electronic form as well. This proposal should address the expectations of entities involved in the creation and performance of these pension products and result in a quicker flow of information, which should facilitate processing of these products. Consideration of this demand would be advantageous for account holders, who will be able to formulate their orders in an easier and less formalized way, with regard to their participation in individual and collective forms of pension savings (instead of traditional paper form only).

ACTIONS UNDERTAKEN:

The KNF Office proposed legislative changes to existing acts governing the third pillar of the pension security system (EPS, IPA and IPSA) to facilitate the use of electronic documents.

I. Employee Pension Schemes Act of 20 April 2004

(Journal of Laws 2016 item 1449)

New wording for the following provisions is proposed:

Art. 18.

Art. 18. 1. The scheme shall be joined by a worker under the conditions specified in the company agreement, on the basis of a declaration on joining the scheme (the "declaration"), one month from its submission, unless the employer confirms earlier that the worker has joined the scheme. The worker's statement of will may be made in paper or electronic form, complying with a system of electronic identification and requirements ensuring the authenticity and reliability of the statement of will.

2. The declaration shall contain the worker's statement that he or she has received a copy of the company agreement and has reviewed it and accepts its conditions, and may also contain a disposition in the event of the worker's death.

3. If the company agreement does not prohibit making additional contributions, and the participant has declared that he or she will pay it, the declaration shall also state the amount of the declared additional contribution and contain authorization for the employer to calculate and deduct it from the participant's pay and transfer it to the participant's account.

4. The employer shall accept the declaration and confirm its acceptance to the participant in the same form as the form in which the declaration was submitted.

During removal

5. If the worker does not have the right to participate in the scheme, the employer shall return the declaration, stating the reason for refusing to accept it, in the same form as the form in which the declaration was submitted. The declaration shall be returned within one month from the date the declaration was submitted by the worker.

5a. The documents prepared in electronic form, as mentioned in par. 1 and 4, shall be properly created, recorded, transferred, stored and secured by the employer until the participant has made a payout, transfer payment or refund.

6. If the participant intends to transfer funds collected in an IPA to the scheme, at the request of the participant the employer shall issue to the participant confirmation of joining the pension scheme.

7. The confirmation of joining the scheme shall contain the data mentioned in Art. 8(2)(2), the name of the employer operating the scheme, the name of the scheme manager, and the account number to which the transfer payment shall be made.

8. Matters related to refusal to accept the declaration and claims between the participant in the scheme and the employer shall be adjudicated by the labour courts competent for the registered office of the employer.

Art. 20.

Art. 20. 1. In matters related to the scheme, the participant shall submit to the employer or through the employer a statement of will in written form or electronic form, complying with a system of electronic identification and requirements ensuring the authenticity and reliability of the statement of will.

1a. The statements of will prepared in electronic form, as mentioned in par. 1, shall be properly created, recorded, transferred, stored and secured by the employer until the participant has made a payout, transfer payment or refund.

2. The participant shall inform the employer of any change of address for correspondence and data mentioned in Art. 8(2)(2).

3. Par. 1, 1a and 2 shall apply accordingly after the end of the employment relationship.

4. If the event of merger, division or sale of the work establishment or an organized part thereof, the participant shall make statements of will through the new employer

5. If the work establishment is liquidated, the participant shall make statements of will through the liquidator, and directly to the manager following the completion of the liquidation.

6. If the employer is declared bankrupt, the participant shall make statements of will directly to the manager. The receiver shall notify the participants in the scheme of the method for making statements of will in matters concerning the scheme in relation to the employer's bankruptcy, within 45 days from the date bankruptcy is declared.

7. In matters related to the scheme, the employer cannot act as a proxy for the participant.

Art. 22.

Art. 22. 1. The employer shall inform the workers in the manner accepted at the employer of the conditions for operation the scheme.

2. The notification shall contain, in particular:

1) the form of the scheme, including an indication of the manager;

2) the amount of the basic contribution;

3) the sum of the additional contributions, as mentioned in Art. 25(4);

4) the statement that it contains only a description of the conditions of the scheme, and the basis for the functioning of the scheme is the company agreement;

5) the minimum and maximum of the monthly additional contribution which may be declared, and the method for making such declaration;

6) an indication of the relevant tax provisions concerning the collected funds;

7) a description of:

a) the rules for paying out, transferring and refunding the funds collected in the participant's account,

b) the procedure for amending the declaration, the consequences, including financial ones, of such changes, and the conditions for withdrawing from the scheme,

c) the rights of the beneficiary in the event of the participant's death,

d) the situations in which the scheme will be liquidated, and the resulting consequences,

e) the possibilities for the participant to dispose of the rights to the collected funds.

3. The manager shall immediately inform the employer of provisions of universally binding law containing changes mentioned in par. 2(7).

4. The employer shall update the information about the rules for operation of the scheme immediately upon receiving it.

5. The employer shall highlight in the notification mentioned in par. 2 any changes which have occurred in the area covered by the notification during the period of 12 months preceding the date of the update.

6. The employer shall also inform the participant of the conditions for paying out the funds collected under the scheme:r:

1) during the first quarter of the calendar year in which the participant reaches age 60, or

2) within 30 days from the end of the employment relationship due to obtaining early pension rights.

Art. 47.

Art. 47. 1. The participant may terminate participation in the scheme at any time by submitting to the employer a statement of will in written form or electronic form, complying with a system of electronic identification and requirements ensuring the authenticity and reliability of the statement of will; the notice period specified in the company agreement must not be shorter than 1 month or longer than 3 months. Art. 43-45 shall apply accordingly..

2. If participation in the scheme is terminated, the funds collected in the account shall remain in the account until they have been paid out, transferred or refunded.

3. Statements of will prepared in electronic form, as mentioned in par. 1, shall be properly created, recorded, transferred, stored and secured by the employer until the participant has made a payout, transfer payment or refund.

II. Regulation of the Minister of Finance of 25 June 2004 on Submission of Information about Participants in Employee Pension Schemes (Journal of Laws No. 153 item 1611)

Proposed new wording of provisions:

§ 2.

The questionnaire shall be delivered to the participant in the employee pension scheme and the successor manager or financial institution maintaining the individual pension account (IPA) by registered letter or in electronic form complying with a system of electronic identification and requirements ensuring authenticity and reliability. The questionnaire in electronic form shall be properly created, recorded, transferred, stored and secured by the manager mentioned in §1(1).

III. Regulation of the Minister of Social Policy of 28 May 2004 on the Employer's Submission to the Supervisory Authority of Annual Information on the Performance of an Employee Pension Scheme (Journal of Laws No. 123 item 1297)

Proposed new wording of provisions:

§ 3.

1. The information shall be submitted:

1) by registered mail,

2) in electronic form, or

3) using with the interface software made available on the website of the supervisory authority free of charge[9].

2. The information shall be accompanied by:

1) a signature,

[9] Being competent in this respect, the MDA should determine the final technical way this solution should be introduced. The provisions proposed by the KNF Office are consistent with the assumptions for the development of financial innovations (FinTech) in Poland. As requested by a large number of employers operating employee pension schemes, their objective is to facilitate the fulfilment of the obligation to submit annual reports on the performance of the scheme, as well as to facilitate the process of entering data from the scheme in the IT systems of the supervisory authority.

2) a qualified electronic signature, or

3) other electronic signature ensuring the authenticity of the information submitted in the manner mentioned in par. 1(3)..

§ 4.

The date of submission of the information is the date of:

1) dispatch by registered mail,

2) submission of a document in electronic form, or

3) registration of the information transferred in the manner mentioned in §3(1)(3) in the teleinformatic system of the supervisory authority.

§ 5 to be added as follows:

§ 5.

1. Information submitted in the manner mentioned in §3(1)(3) shall be sent using:

1) rules for controlling the correctness of the information,

2) a description of the method for verifying the correctness of the official certification of the receipt and integrity of the information,

3) the specification of the interface software used to submit the information,

available on the website of the supervisory authority.

2. The supervisory authority or the electronic mailbox of the teleinformatic system of the supervisory authority shall confirm, in the form of an electronic document, submission of the information using means of electronic communication..

3. After completing the proper verification of the logical structure, the correctness of the data, the authenticity of the information, and the authorization to sign the information, the official acknowledgement of receipt generated by the electronic mailbox of the teleinformatic system of the supervisory authority:

1) shall ensure the integrity of the submitted information in accordance with the Act on Computerization of Entities Performing Public Functions of 17 February 2005 (Journal of Laws 2017 item 570),

2) shall be proof and confirm the date of submission of the information.

As a result of adding §5, the current §§ 5 and 6 would be renumbered §§ 6 and 7 accordingly.

IV. Act on Individual Pension Accounts and Individual Pension Security Accounts of 20 April 2004 (Journal of Laws 2016 item 1776)

Proposed new wording of provisions:

Art. 4.

Art. 4. 1. The holder of the IPA shall have the right to a tax exemption under the rules and procedure specified in the provisions on personal income tax, if he or she collects savings in only one IPA under an IPA contract, subject to Art. 14 and 23.

2. The holder of the IPSA shall have the right to deduct from his or her income the payments to the IPSA under the rules and procedure specified in the provisions on personal income tax, if he or she collects savings in only one IPSA under an IPSA contract, subject to Art. 14 and 23.

Art. 8.

Art. 8. 1. The IPA or IPSA shall be maintained under the contract concluded with the account holder, in written form or in electronic form complying with a system of electronic identification and requirements ensuring the authenticity and reliability of the statements of will ("IPA or IPSA contract") with:

1) an investment fund,

1a) a voluntary pension fund,

2) an entity conducting brokerage, for services related to the execution of orders for purchasing or selling financial instruments and maintaining a securities account and a cash account,

3) an insurance company – life insurance company with unit-linked life insurance, or

4) a bank, for maintaining a bank account.

2. The account holder shall the right to change the financial institution maintaining his or her IPA or IPSA by transferring the funds.

3. The account holder may collect funds in the IPA or IPSA in an insurance capital fund collected under a contract for life insurance with unit-linked life insurance, concluded before the date of conclusion of the IPA or IPSA contract, provided that the funds collected in the IPA or IPSA are registered separately and the insurance company ensures the possibility to transfer the funds collected in the IPA or IPSA to another financial institution, subject to the rules mentioned in Art. 29.

4. The account holder may collect funds in the IPA or IPSA under a contract for services related to the execution of orders for purchasing or selling financial instruments and maintaining a securities account and a cash account, concluded before the date of conclusion of the IPA or IPSA contract, provided that the funds collected in the IPA or IPSA are registered separately.

4a. An IPA or IPSA contract in electronic form shall be properly created, recorded, transferred, stored and secured by the financial institution.

Art. 10.

Art. 10. 1. The financial institution accepting the declaration mentioned in Art. 7(1)(2) shall issue to the IPA holder a confirmation that the IPA contract has been concluded ("confirmation of conclusion of IPA contract"), prepared in written form or electronic form complying with a system of electronic identification and requirements ensuring the authenticity and reliability of the statement of will. A confirmation of conclusion of IPA contract prepared in electronic form shall be properly created, recorded, transferred, stored and secured by the financial institution.

2. The financial institution shall also issue to the account holder a confirmation of conclusion of IPA contract when it is planned to transfer the funds collected under the pension scheme to the account holder's IPA.

3. The confirmation of conclusion of IPA contract shall contain the personal data of the account holder, the name of the financial institution with which the account holder has concluded the contract, and the number of the account to which the transfer shall be made.

4. If a transfer is executed, the account holder may make payments once the account has been credited with the funds transferred from the former institution maintaining the IPSA, unless the situation mentioned in Art. 14(1) occurs, and the account holder has concluded an IPSA contract with another financial institution.

Art. 10a.

Art. 10a. 1. The financial institution accepting the declaration mentioned in Art. 7a(1)(2) shall issue to the IPSA holder a confirmation that the IPSA contract has been concluded ("confirmation of conclusion of IPSA contract"), prepared in written form or electronic form complying with a system of electronic identification and requirements ensuring the authenticity and reliability of the statement of will. A confirmation of conclusion of IPSA contract prepared in electronic form shall be properly created, recorded, transferred, stored and secured by the financial institution.

2. The confirmation of conclusion of IPSA contract shall contain the personal data of the account holder, the name of the financial institution with which the account holder has concluded the contract, and the number of the account to which the transfer shall be made.

3. W przypadku dokonania wypłaty transferowej oszczędzający może dokonywać wpłat dopiero po wpływie środków będących przedmiotem wypłaty transferowej z dotychczasowej instytucji prowadzącej IKZE, chyba że występuje sytuacja, o której mowa w art. 14 ust. 1, a oszczędzający zawarł umowę o prowadzenie IKZE z inną instytucją finansową.

V. Regulation of the Minister of Finance of 25 October 2011 Establishing the Templates for Information on Funds Collected by an Account Holder in an Individual Pension Account or Individual Pension Security Account and the Deadline and Procedure for Their Submission (Journal of Laws No. 239 item 1427)

Proposed new wording of provisions:

§ 2.

1. The information mentioned in §1, together with execution of the transfer, shall be submitted by financial institutions maintaining individual pension accounts and financial institutions maintaining individual pension security accounts to another financial institution or the manager of the pension scheme by registered mail or in electronic form complying with a system of electronic identification and requirements ensuring authenticity and reliability, no later than 14 days from the date the transfer is executed. Information submitted in electronic form shall be properly created, recorded, transferred, stored and secured by the financial institution.

2. The information shall be deemed to be submitted on the date of dispatch of the registered mail or transmission of the document in electronic form.

With regard to these legislative proposals, it should be pointed out that there is a potential inconsistency between the proposed forms of statements of will submitted under EPSs, IPAs or IPSAs and the forms for statements of will stipulated in the Civil Code. In the course of further activities, it would be necessary to establish the relation between the requested provisions and the regulations in the Civil Code, in which respect it would be desirable to assume the specific nature of the requested regulations in relation to the provisions of the CC.

With respect to the demand raised by the CFAM concerning replacement of the written form of the EPS questionnaire with e-declarations, it should be pointed out that the KNF Office finds it necessary to first provide for a platform for exchange of information between financial institutions which would allow for the interoperability of the IT infrastructure used by such institutions.

ACTIONS UNDERTAKEN:

The CFAM proposed amendments to the Act on Individual Pension Accounts and Individual Pension Security Accounts to allow financial institutions to submit electronic tax returns to tax offices.
It is proposed that Art. 22 of the Act on Individual Pension Accounts and Individual Pension Security Accounts of 20 April 2004 shall read as follows:

1. When making a payment mentioned in Art. 34(1)(1), 34a(1)(1) or 46, the financial institution or receiver shall prepare and submit information on the one-off payout or payout of the first instalment to the head of the tax office competent for the account holder in matters related to personal income tax, by the 7th day of the month following the month when the payout is made. The information shall be submitted under the rules set forth in Art. 3a–3b of the Tax Ordinance of 29 August 1997 (Journal of Laws 2017 item 201, as amended).

2. Before making the payout, the account holder shall inform the financial institution or receiver of the head of the tax office competent for the account holder in matters related to personal income tax, and if the payout is made to an IPA holder, present the decision of the disability body awarding the right to a retirement pension, if the account holder has not reached the age of 60.

3. The information mentioned in par. 1 shall contain:

1) identification data of the IPA or IPSA;

2) personal data of the account holder;

3) the date of the first payout or the date of acceptance of the first transfer payment, whichever occurred earlier;

4) the sum of contributions in each calendar year;

5) the amounts and dates of transfer payments accepted in the IPA or IPSA of the account holder and information on the name of the financial institution or on the data of the manager and the data of the employer operating the pension scheme for those making the payouts;

5a) the amounts and dates of partial refunds and the name of the financial institution making the partial refund;

6) the sum of the basic contributions paid in, if a transfer payment from the pension scheme has been made to the IPA of the account holder;

7) the amount and date of payout;

8) a copy of the decision of the disability body granting the right to a retirement pension, if the account holder has not reached the age of 60.

4. If the account holder fails to fulfil the obligation mentioned in par. 2, the financial institution shall not execute the payout.

5. In agreement with the minister responsible for social insurance, the minister for public finances shall specify by regulation the template for information mentioned in par. 3 and the method for its submission, taking into account the necessity to ensure the possibility to verify the account holder's rights to a tax exemption.

The CFAM is of the opinion that as with EPSs, attempts should be made to adjust the provisions to the universally accepted market standards in terms of IPAs and IPSAs and enable account holders to use them. Moreover, in light of the universal option for taxpayers themselves to submit tax returns electronically, it is also justified to introduce the same option for financial institutions. The former wording of Art. 22 of the IPA/IPSA Act forced financial institutions to submit the information mentioned in this

		provision to tax offices in written form. This requirement does not seem to be justified, and additionally increases the costs of servicing such accounts. In the opinion of the CFAM, another possible legislative solution is to amend the regulation issued on the basis of the legislative authorization provided in Art. 22(5) of the IPA/IPSA Act similarly to the provisions of the Tax Ordinance. The authority to issue such regulation already provides for specification of the method for submitting the information, but as of now the regulation does not contain such provisions. **RECOMMENDATIONS FOR FURTHER ACTIVITIES:** **In cooperation with the MFLSP and the MJ, the MDA and the MF should undertake initiatives to include the proposed legislative changes to current acts governing the third pillar of the pension security system (EPS, IPA and IPSA) to facilitate the use of electronic documents.** **The MF should analyze legislative proposals by the CFAM to amend the Act on Individual Pension Accounts and Individual Pension Security Accounts to allow financial institutions to submit electronic tax returns to tax offices.**	
61	**ARCHIVING PAPER COPIES OF REPORTS SUBMITTED BY INVESTMENT FUND COMPANIES AND INVESTMENT FUNDS TO THE KNF (CFAM)** The obligation to store reports submitted by investment fund companies and investment funds to the KNF using a dedicated system seems excessive and often burdensome, when all the reports are also archived electronically, in particular in the ESIT. It would be desirable to abandon the requirement to store paper copies of reports and to enable electronic archiving.	In the course of the Task Force's work, it was agreed that it would be desirable to propose changes to regulations in order to abandon the requirement for investment fund companies and investment funds to store paper copies of reports and to enable electronic archiving. **ACTIONS UNDERTAKEN:** **In cooperation with the CFAM, the KNF Office proposed changes to regulations in order to repeal the requirement for investment fund companies and investment funds to store paper copies of reports and allow for electronic archiving.** Proposed amendment of §5 of the Regulation of the MEDF of 27 December 2016 on the Technical Means and Conditions for Submitting Certain Information by Entities Supervised by the Polish Financial Supervision Authority (the "Regulation"). As proposed by the CFAM, if a document is recorded electronically, it is necessary to ensure that it is accompanied by a qualified electronic signature or an advanced electronic signature of the persons mentioned in §5(1) of the Regulation in its current wording. Furthermore, it is necessary to ensure the reliability and integrity of the documents. In view of the above, the KNF Office proposes that §5 of the Regulation read as follows: § *5. 1. The submitted information shall be recorded in the form of a written or electronic document, properly signed or accompanied by a qualified electronic signature or an advanced electronic signature of the persons authorized to represent the supervised entity, and of the certified accountant, with regard to the audit opinion on the financial statements and the report on review of the financial statements.*	**During removal**

		2. The documents mentioned in par. 1 shall be archived by the supervised entity for the period specified in separate provisions. The Regulation of the Minister of Finance of 2 December 2005 on Handling of Documents Related to Performance of Certain Actions Covered by the Trading in Financial Instruments Act (Journal of Laws No. 242 item 2041) shall apply accordingly to storing and securing of electronic documents recorded on IT data carriers. In the course of the Task Force's work it was pointed out that the above legislative proposal would also have a positive impact on the activities of other entities supervised by the KNF. **RECOMMENDATIONS FOR FURTHER ACTIVITIES:** **The MF should take into account the legislative proposal to repeal the requirement for investment fund companies and investment funds to store paper copies of reports and allow for electronic archiving.**	
62	**REQUIREMENT TO STORE REGISTERS OF PARTICIPANTS IN INVESTMENT FUNDS IN THE TERRITORY OF POLAND (CFAM)** It would be desirable to amend Art. 87(3) of the Act on Investment Funds and Management of Alternative Investment Funds of 27 May 2004 by extending this to EU member states.	It was agreed that this barrier would not be subject to further work by the Task Force as it is not related to the FinTech sector.	**Beyond the scope of work**

Insurance Sub-Group

No.	Name and description of barrier (the entity raising it)	Arrangements/actions taken/recommendations	Status of barrier[1] (removed, during removal, not removed, unjustified, beyond the scope of work)
63	**ADAPTING THE DEFINITION OF OUTSOURCING IN THE ACT ON INSURANCE AND REINSURANCE ACTIVITY TO THE SOLVENCY II DIRECTIVE** (FINTECH POLAND) The broad definition of outsourcing in the Act on Insurance and Reinsurance Activity of 11 September 2015 (IRAA) makes contracts concluded by a service provider and its subcontractors, including further contractual relations of subcontractors, directly subject to the outsourcing regime regulated by the act. Insurance companies very often use multilevel outsourcing, and the requirements imposed on subsequent companies in the chain (at the third or subsequent levels) are too rigorous. Very often a tech company delivers only a small technical component to the insurance company's supplier, and should not be burdened with current legal requirements, as the insurance company's immediate supplier ultimately bears full responsibility for performance of the outsourced activities. The Solvency II Directive defines outsourcing more narrowly as only a contract between the insurance company and the service provider. This definition clearly states that the service provider may appoint subcontractors, but the regulatory regime is imposed on the contractual relation between the insurance company and the service provider.	In the course of the Task Force's work, it was pointed out that under the definition of outsourcing in Art. 3(1)(27) IRAA, the provisions on outsourcing also apply to sub-outsourcing (this approach has been confirmed by the KNF Office with other supervisory authorities). It was pointed out that this demand is not consistent with the practice on the EU market and would limit the KNF Office's obtaining of information and exercise of supervision over the use of outsourcing by insurance and reinsurance companies. Upholding the current definition of outsourcing will ensure the effectiveness of the recommended activities mentioned in Barrier No. 65 on the transfer of insurance secrets under outsourced IT services.	Not removed

[10] The statuses of the identified barriers are defined as follows: Removed – a barrier has been removed completely, no recommendations for further activities; During removal – certain activities have already been undertaken and/or recommendations for further activities have been formulated; Not removed – a barrier is related to the FinTech field, but no acceptable solution has been worked out in the course of the Task Force's activities; Unjustified – a barrier does not exist; Beyond the scope of work – a barrier does not refer to the FinTech field.

64

POSSIBILITY TO ARRANGE FOR MUTUAL INSURANCE BY NATURAL PERSONS (FINTECH POLAND, CPI)

The IRAA imposes very high requirements for entities intending to carry out insurance activity—both formal (to obtain a licence and operate in the legal form of a joint-stock company or mutual insurance company) and capital. The possibility to arrange for mutual insurance by natural persons—businesses or social or sector-based associations—is significantly limited, while any grassroots initiatives must gain a protective umbrella in the form of existing insurance companies. It should be pointed out that peer-to-peer insurance is gaining in popularity in Europe and beginning to be offered in Poland.

It would be desirable to review the regulations in terms of the potential introduction of solutions regulating the arrangement of mutual insurance by natural persons under significantly lower requirements. In practice, it would be necessary to define small undertakings by statute, which would exclude the obligation to obtain a licence in the case of relatively small turnover.

In the course of the Task Force's work, it was pointed out that the current provisions authorize mutual insurance companies (MICs) to create mutual insurance associations under which innovative startups may develop their activity in the field of peer-to-peer insurance. It was agreed that it was not justified to amend the relevant legal provisions.

It was pointed out that the IRAA provides for the legal form of "small mutual insurance companies" (small MICs). Art. 109(5) IRAA provides for simplified capital requirements for small MICs. For entities which may not be deemed small MICs (i.e. not fulfilling the criteria in Art. 109(1) IRAA), a lower threshold for the minimum capital requirement is specified in Art. 273(2) IRAA, in accordance with EU law, at a level dependent on the assumed base amounts. The base amounts are differentiated depending on the scope and type of insurance activity carried out by the respective insurance company. It was emphasized that the proposal to completely abandon the obligation to obtain a licence for carrying out insurance activity may result in violation of the interests of insureds or beneficiaries. Natural persons may not be able to arrange for mutual insurance, in particular due to the lack of sufficient capital to cover potential losses.

Unjustified

65

BAN ON FURTHER TRANSFER OF INSURANCE SECRETS UNDER OUTSOURCED IT SERVICES (PIA)

The impossibility to transfer insurance secrets in the course of sub-outsourcing creates significant barriers to the development of innovative services—in particular with the use of cloud computing solutions under which the entity processing the entrusted data uses a cloud system operated by an external provider.

In the course of the Task Force's work, it was found justified to abandon the limitation concerning the transfer of insurance secrets in the course of sub-outsourcing. It was pointed out that this practice is allowed for personal data, which constitute a significant part of insurance secrets. It was agreed that the PIA would propose changes to the legal provisions.

ACTIONS UNDERTAKEN:

The PIA proposed a change to the legal provisions to facilitate the transfer of insurance secrets under sub-outsourcing.

It is proposed to amend Art. 35(2)(25) IRAA:

25) an entity processing, in the course of outsourcing ~~on the order of the insurance company~~ data concerning policy holders, insureds and beneficiaries under insurance contracts, and administrators of individual accounts for units in an insurance capital fund;

The proposal will be evaluated by the IGPPD in the legislative process.

During removal

RECOMMENDATIONS FOR FURTHER ACTIVITIES:

As requested by the PIA, the MDA should analyze (as part of the implementation of the GDPR), in cooperation with the MF and the IGPPD, the proposed amendment to the Act on Insurance and Reinsurance Activity to enable the transfer of insurance secrets in the course of sub-outsourcing.

66

SIMPLIFYING THE INSURANCE SECTOR'S ACCESS TO COLLECTIONS OF REFERENCE DATA, SUCH AS PESEL, CRD, KRS, SLI AND NHF, TO REDUCE INSURANCE PREMIUMS AND ENHANCE THE SECURITY OF INSURANCE PROCESSES (PIA)

In accordance with Art. 42(1) IRAA, at the request of the insurance company, in the course of activities carried out by the insurance company and to carry them out, in the event of an accident or a random event which is a basis for establishing liability, the prosecutor's office, the Police and other bodies and institutions shall provide information on the state of the case and make available the collected evidence if necessary to establish the circumstances of the accident or random event and the amount of compensation or benefit. In practice, considering the scale of activity of the insurance market and the relatively short deadlines for handling claims, it is not possible to confirm, in the course of the claims handling process, each document which is received by the insurance company by submitting an individual application for disclosure of data in the PESEL database or collected by ZUS, KRUS, SLI, NHF, CEPiK, or TERYT.

It would be desirable to amend these regulations or statutes governing access to these databases.

In the course of the Task Force's work it was established that wider access by insurance companies to certain public databases and a different procedure for obtaining such data may facilitate business processes (among other things by speeding them up, reducing costs, enhancing the effectiveness of risk assessment, and, in consequence, reducing insurance premiums in certain cases). At the same time, it was pointed out that this barrier is very broad and it is necessary to consider access to each of the databases on an individual basis. Furthermore, it was noted that the operators of the databases in the first place, and beyond them the legislature, are to decide whether to provide insurance companies with access to specific databases. It was also emphasized that an important component involves the period during which the consent to obtaining data about the customer from the respective register is valid. It was agreed that the consent should be valid in practice only during the contractual period and attempts should be made to devise appropriate provisions to provide insurance companies access to specific databases only to the extent and for the purposes of their insurance activity.

A representative of the PIA stated that the insurance sector was in dialogue with the MDA and other institutions with regard to access to certain public databases. He pointed out that the demands of the insurance market with regard to access to reference data refer to a large extent to a collection of data which insurance companies already have access to. This means that in most cases the insurance sector seeks to make the provisions on the method and procedure for obtaining the data more flexible.

It was agreed that the PIA would propose solutions to be presented also under bilateral contacts of the PIA with the operators of specific databases.

ACTIONS UNDERTAKEN:

The PIA proposed solutions with regard to the insurance sector's access to registers maintained by the public authorities.

Database of the Universal Electronic System for Registration of the Population (PESEL)

With regard to the PESEL database, the existing barriers will be resolved by:

1. Simplifying the provisions of the Act on Registration of the Population of 24 September 2010 to specify a transparent procedure when data are verified by teletransmission, when the condition of having a factual interest, as mentioned in Art. 46(2)(3) of the act, is fulfilled, supplemented by obtaining the consent of the data subject. The current provisions do not sufficiently take into account the course of teletransmission, while the insurance market is interested in such a mode. Furthermore, the act should specify a minimum set of data necessary to confirm the data and a detailed process of reporting inconsistencies in the data.
2. Including in this act a provision allowing insurance companies to submit one application with regard to the respective legal or factual interest, as provided for authorized entities. Only such a solution guarantees

During removal

the automation of the process of data verification by teletransmission (after the insurance company has fulfilled the required technical conditions).

3. Introducing an electronic procedure for correcting and supplementing datasets, while fulfilling the required formal legal and technical requirements and the consent of the data subjects.

Database of the Central Register of Vehicles and Drivers (CEPiK)

With regard to the CEPiK database, the existing barriers will be resolved by:

Making the following changes to:

- Art. 100ah(1)(21) of the Road Traffic Law of 20 June 1997 (including the amendment of 24 July 2015):

  21) to insurance companies ~~to the extent necessary to exercise the rights mentioned in Art. 43 of the Act on Obligatory Insurance, the Insurance Guarantee Fund and the Polish Motor Insurers' Bureau of 22 May 2003~~;

- §12 of the Regulation of the Minister of Digital Affairs of 12 July 2016 on the Type and Scope of Data Disclosed from the Central Register of Drivers:

  §12 Insurance companies shall be provided the data mentioned in Art. 100aa(1)(1)–(3) and (4) (1)–(7), (10), ~~(11) and (13)~~ and (11)–(13) of the act.

  i.e. including data mentioned in point 12) regarding petty offences, crimes and points.

Under current law, insurance companies may access data from the CRD with regard to the right to drive a vehicle (driving licence of a specific category) only for seeking recourse against the driver. However, the fact of holding a driving licence of a specific category and the period of holding the document is one of the components of the risk assessment the insurance company enquires about when concluding the insurance contract. Since the MDA launched its activities with regard to changes related to CEPiK 2.0, the insurance market has pointed out the need for data concerning the right to drive vehicles, including information about the withdrawal of such rights and penalty points, for the purposes of the statutory tasks of insurance companies, i.e. concluding and performing insurance contracts: assessing insurance risk correctly, handling claims, and taking steps necessary to identify, verify and counteract the violation of the interests of all the participants in the insurance market.

In the opinion of the PIA, insurance companies are not ordinary commercial entities which would be in a "privileged position" compared to other commercial entities thanks to access to data and information contained in state registers. By law, only insurance companies are allowed to offer services related to conclusion and performance of insurance contracts. What is more, with regard to certain types of insurance, e.g. civil-liability insurance for holders of motor vehicles, the law even requires insurance companies to conclude such an insurance contract, as expressly stated in Art. 5 of the Act on Obligatory Insurance (...), while specifying in other provisions how such insurance contract should be concluded and performed.

Premiums paid in by all insured drivers constitute an insurance fund used to pay out compensation and benefits to injured parties and beneficiaries. Insurance activity is based on the assessment of insurance risk. At the stage of concluding the insurance contract, the right to verify whether the holder of the vehicle has the right to drive it, whether the right has been withdrawn/limited, and for what reason, will make it possible for insurance companies to create more advanced models for establishing rates of insurance premiums. This will also make it possible to prevent an increase in civil-liability premiums for safe drivers complying with the road traffic regulations.

Poland is still one of the worst European countries in terms of road safety. This is determined by a large number of factors related not only to driving style, but also for example road infrastructure. However, as shown by changes related e.g. to the possibility of seizing a driver's licence when the driver has exceeded the speed limit by more than 50 km/h in a built-up area, the increased awareness among drivers of the direct consequences resulting from violation of road traffic regulations contributes to reducing the number of victims of accidents and the losses incurred by the society and the national economy. It is also in the public interest to introduce the change requested by the insurance community, as drivers' awareness that their data contained in the CRV and the CRD will be taken into account when calculating their insurance premiums may have a real impact on their driving behaviour.

Database of the National Health Fund (NHF)

With regard to the database of the NHF, the existing barriers will be resolved by:

Introducing in the Act on Healthcare Services Financed from Public Funds an obligation to computerize the process of submitting and answering queries in relations between insurance company—NHF—insurance company. The proposed solution should ensure the accessibility of NHF data by electronic means, when demonstrating a factual or legal interest (as in the Act on Registration of the Population). The insurance sector requests introduction of the possibility to confirm the following data electronically:

1) The person's name;
2) Address data of the person;
3) Names and addresses of service providers who have rendered healthcare services in relation to a reported insurance event, and the date they were rendered to the insured.

This information is necessary to establish the liability for reported claims and to pay out the benefit in the correct amount. To date this has been confirmed in accordance with the law, but in paper-based correspondence.

The provisions concerning the subject and scope of collective life insurance contracts, regulated in both the general insurance conditions (GIC) and the specific, individual conditions of the contracts negotiated with the policy holder in the tender proceeding and in the wording of the clauses included in the declaration on joining the insurance, contain a number of binding exemptions from liability for reported events, which mainly concern the health condition of the insured. When joining the contract, the insured confirms in the declaration on joining the insurance that he or she fulfils the conditions specified in the GIC, in particular is not on sick leave, in a hospital or hospice on the date the declaration is signed,

and has not been the subject of a ruling on incapacity to work. A number of exemptions from liability also refer to the necessity to verify at the stage of claim administration whether during a particular period of time before joining the insurance contract the insured person was suffering from the illness of which he or she later died.

As specified by law, this information is verified every time on the basis of the written consent of the insured to apply to medical facilities and the NHF for release of the relevant medical documentation to the insurance company. The detailed scope of the documentation and information which may be obtained by insurance companies from the NHF and medical facilities is specified in the Act on Insurance and Reinsurance Activity. However, the insurance sector requests electronic access to selected data collected by the NHF, as this will significantly streamline the process of verifying the information provided by the insured at the stage of joining the insurance, in particular by persons who joined contracts when they were in very poor health and failed to disclose this to the insurance company. Claims filed by such persons, or their heirs in the event of the death of the insured, require detailed analysis and collection of medical documentation, and are subject to detailed explanations in accordance with Art. 815 of the Civil Code.

In the opinion of the insurance companies, the process of verifying insurance fraud involving the concealment of information about the health condition of the insured and the reporting of non-random claims dependent on health condition is currently difficult and time-consuming. In a large number of situations, it is impossible to establish in which medical facility the insured person has been treated and to obtain proper medical documentation justifying refusal to pay the benefit, even though the health condition, cause of death and very short period of insurance indicate without any doubt that on the date of signing the declaration the insured was seriously ill and concealed that fact intentionally.

The possibility to establish by electronic means the medical facility where the insured person has been treated, the period he or she was there, and the address of the facility, will deter other persons seeking to copy the action involving concealment of information about health condition, and will contribute to reducing the occurrence of insurance crimes on the life insurance market.

Database of the Social Insurance Institution (ZUS)

With regard to the database of ZUS, the existing barriers will be resolved by:

Amending Art. 50 of the Social Insurance System Act of 13 October 1998 to indicate insurance companies as entities authorized to submit electronic applications to confirm data collected by the Social Insurance Institution, including:

1) Name of the insured;
2) Address data;
3) The fact that the incapacity to work has been declared (the degree and time for which the incapacity has been declared);
4) The fact of using sick leave or sickness benefit;
5) The period during which the incapacity has persisted.

Such queries could be submitted only if the insurance company held a factual interest and had the consent of the data subject. Insurance companies should be able to submit one application with regard to

life insurance, dowry insurance and accident insurance. Only a solution providing for maximum openness to electronic handling of the process makes it possible to automatically verify the data by teletransmission (after the insurance company has fulfilled the required technical conditions).

As a private sector, insurance companies assume that such disclosure would bear a fee, but the costs would correspond to the actual expenditure incurred by the Social Insurance Institution to serve the insurance companies and there would be an efficient process in place for collecting the fees (a subscription fee for a specific number of queries or periodic fees depending on the actual use).

Database of the Agricultural Social Insurance Fund (KRUS)

With regard to the database of KRUS, the existing barriers will be resolved by:

Indicating insurance companies in the Act on the Social Insurance System for Farmers of 13 October 1998 as entities authorized to submit electronic applications to confirm data collected by KRUS, including:

1) Name;
2) Address data;
3) The fact that an incapacity to work in agriculture has been declared (the degree and time for which the incapacity has been declared);
4) The fact of using sick leave or sickness benefit;
5) The period during which the incapacity has persisted;
6) The fact that a report on a work-related accident in agriculture has been drawn up (date and number of the report).

Such queries could be submitted only if the insurance company held a factual interest and had the consent of the data subject. Insurance companies should be able to submit one application with regard to the respective factual interest. Insurance companies need the data for administering claims related to life insurance, dowry insurance and accident insurance. Only a solution providing for maximum openness to electronic handling of the process makes it possible to automatically verify the data by teletransmission (after the insurance company has fulfilled the required technical conditions).

As a private sector, insurance companies assume that such disclosure could bear a fee, but the costs would correspond to the actual expenditure incurred by the Agricultural Social Insurance Fund to serve the insurance companies and there would be an efficient process in place for collecting the fees.

Database of the State Labour Inspectorate (SLI)

With regard to the database of the SLI the existing barriers will be resolved by:

Including insurance companies in the State Labour Inspectorate Act as entities authorized to submit electronic applications to confirm data collected by the SLI, including:

1) Name;
2) Address data;
3) The fact that a report on an accident at work has been drawn up (date and number of the report.

		National Official Register of the Territorial Division of the Country (TERYT) The barrier related to access to the TERYT register was removed on 31 March 2017 by launching the eTERYT service at the internet portal http://eteryt.stat.gov.pl. The IGPPD pointed out that banks' access to data processed in the registers is subject to fulfilment of all the requirements under the provisions on protection of personal data. The changes proposed by the PIA to the provisions on the PESEL, CEPiK, NHF, ZUS, KRUS and SLI databases will be evaluated by the IGPPD during the legislative process. **RECOMMENDATIONS FOR FURTHER ACTIVITIES:** **The PIA and the Ministry of Digital Affairs should undertake activities taking into account the demand by the insurance sector concerning access to the PESEL and CEPiK databases.** **In cooperation with the NHF and the MH, the PIA should undertake activities taking into account the demand by the insurance sector concerning access to the NHF database.** **In cooperation with the Social Insurance Institution and the MFLSP, the PIA should undertake activities taking into account the demand by the insurance sector concerning access to the ZUS database.** **In cooperation with KRUS and the MARD, the PIA should undertake activities taking into account the demand by the insurance sector concerning access to the KRUS database.** **In cooperation with the SLI, the PIA should undertake activities taking into account the demand by the insurance sector concerning access to the SLI database.** **The PIA should undertake activities to consult proposed solutions concerning the insurance sector's access to public registers with the IGPPD in terms of compliance with rules for correct data processing.**	
67	**INFLEXIBLE PROVISIONS CONCERNING THE USE OF SIGNATURE CERTIFICATES WHEN AUTHORIZING INSURANCE ACTIVITIES (PIA)** It is pointed out that it is necessary to reduce the excessive provisions concerning the requirements to use a qualified signature, particularly in view of the entry into force of the eIDAS Regulation and alternative forms of authentication. It would be desirable to amend the Regulation of the Minister of Finance of 18 September 2006 on Maintenance of the Register of Insurance Brokers and the Method for Disclosing Information from the Register accordingly.	In the course of the Task Force's work, it was pointed out that the draft Insurance Distribution Act is in the legislative process as part of the implementation of the IDD. A representative of the MF stated that this matter had been taken into account by including in the bill an authorization to issue a regulation specifying the detailed procedure for carrying out the activity of insurance brokers. The representative stated that the draft statute would be approved in February 2018 at the latest. **ACTIONS UNDERTAKEN:** **When working on the draft Insurance Distribution Act, the MF took into account the need to amend the provisions on the use of signature certificates when authorizing insurance activities, by including in the draft act an authorization to issue a regulation specifying the detailed procedure for carrying out the activity of insurance brokers.**	**During removal**

RECOMMENDATIONS FOR FURTHER ACTIVITIES:

When drafting the regulation on maintenance of the register of insurance brokers and the method for disclosing information from the register (authorization to issue the regulation is included in Art. 54(10) of the draft Insurance Distribution Act), the MF should take into account the proposed changes in the provisions concerning the use of signature certificates when authorizing insurance activities.

68	**FACILITATING THE READING OF 2D AZTEC FIELD CODES ON VEHICLE REGISTRATION CERTIFICATES (PIA)** To automate the reading of the data, it would be justified to remove the encryption mechanism from the 2D Aztec field codes on vehicle registration certificates or disclose the encryption code to insurance companies. It would be desirable to amend the regulation on registration and marking of vehicles accordingly.	In the course of the Task Force's work, a representative of the PIA pointed out that the encryption of the data contained in the vehicle registration certificates with the 2D Aztec field code does not follow from any legal provisions and makes it impossible to automatically read the data with a scanner during the operational activity of insurance companies. He claimed that it would be desirable to remove the encryption or disclose the encryption code. **ACTIONS UNDERTAKEN:** **The MED contacted the MIC to clarify the encryption of the data placed on the vehicle registration certificated in the 2D Aztec field code.** According to the MIC, the exclusive owner of the copyright to the mechanisms (algorithms) of coding/decoding the data contained in the 2D AZTEC code on registration certificates is Polska Wytwórnia Papierów Wartościowych S.A., the producer of registration certificates selected by the minister for transport in accordance with Art. 75d of the Road Traffic Law of 20 June 1997 (Journal of Laws 2017 item 1260). Entities interested in gaining access to mechanisms enabling them to read the data contained in the 2D AZTEC code printed on registration certificates may apply directly to PWPW S.A. The MIC also explained that the Regulation of the Minister of Infrastructure of 22 July 2002 on Registration and Marking of Vehicles (Journal of Laws 2016 item 1038) specifies only the place where the bar code should be located on the registration certificate, pursuant to the authorization resulting from the statutory delegation to specify the template for the registration certificate. The regulation does not address any technical matters concerning the 2D Aztec code placed by its producer on the registration certificate, including issues of coding or decoding. Thus it does not contain any regulations which may be a legal barrier to reading them. Additionally, it was pointed out in the course of the Task Force's work that ZETO Koszalin Sp. z o.o. delivers the mechanism to encrypt data on the vehicle registration certificates with the 2D Aztec field code. **RECOMMENDATIONS FOR FURTHER ACTIVITIES:** **In cooperation with the MIC, IGPPD, PWPW S.A. and ZETO Koszalin Sp. z o.o., the PIA should undertake activities to take into consideration the demand of the insurance sector to enable the automatic reading of the data on vehicle registration certificates in the 2D Aztec field code.**	During removal

69

ENABLING THE STORAGE OF PAPER DOCUMENTS AND THEIR DIGITAL COUNTERPARTS IN THE ARCHIVES OF INSURANCE COMPANIES FOR A SPECIFIC PERIOD OF TIME (PIA)

Currently insurance companies archive a significant portion of their documentation in paper form. A mechanism should be built to replace such documents with their secured scans. It would be desirable to amend the Act on Insurance and Reinsurance Activity accordingly.

In the course of the Task Force's work, a representative of the PIA proposed to amend the provisions so that insurance companies could store information and documents on insurance contracts for archiving purposes for a period of 20 years. He pointed out that insurance companies have often faced situations where insurers have destroyed documents related to cases which are not yet time-barred, which can make it difficult or impossible to process such cases. Often the insured has little or no access to the case file due to the current 3-year limitations period. It appears from an analysis of the situation that in many cases the insurance company may not be aware of the actual date when a claim under an insurance contract becomes time-barred.

In the course of the Task Force's work, it was pointed out that Art. 5(1)(e) GDPR specifies that personal data may be stored for a longer period than required for the purposes for which the data are processed, as long as they are processed for archiving purposes in the public interest and appropriate technical and organizational means are implemented to protect the rights and freedoms of the data subjects ("limited storage").

ACTIONS UNDERTAKEN:

The PIA proposed a legislative change to enable insurance companies to store information and data on insurance contracts for archiving purposes for a period of 20 years.

It is proposed to add a new par. 11 in Art. 29 IRAA:

Art. 29 (11)

The insurance company may store information and documents concerning an insurance contract for archiving purposes for a period of 20 years after the expiry of the insurance coverage, after applying appropriate technical and organizational means to protect the rights and freedoms of the data subjects.

RECOMMENDATIONS FOR FURTHER ACTIVITIES:

As requested by the PIA, the MDA should analyze (as part of the implementation of the GDPR), in cooperation with the MF and the IGPPD, the proposed legislative change to the Act on Insurance and Reinsurance Activity in order to enable insurance companies to store information and documents on insurance contracts for archiving purposes for a period of 20 years.

During removal

70	**ENABLING COLLECTION OF ALL STATEMENTS FROM CUSTOMERS IN ELECTRONIC (DOCUMENT) FORM (CPI)** The impossibility to collect electronic statements from customers in order to obtain data from hospitals and the NHF hinders the development of online insurance sales. The impossibility of finalizing the process online increases the operational costs incurred by insurance companies and thus affects the cost of insurance for customers. It would be justified to amend the IRAA, e.g. Art. 38 and 39 in this respect. It would be desirable to accept statements made in electronic form (when it is possible to clearly identify the customer) or in oral form (as a recording of the interview with a customer whose identity has been confirmed).	In the course of the Task Force's work, it was pointed out that the MDA had undertaken activities aimed at amending the IRAA as part of the implementation of the GDPR. Before formulating the proposed changes, meetings were held with the PIA and the changes were devised in cooperation with the MF as the ministry responsible for legislative measures in the insurance sector. As a result, the draft changes proposed by the MDA will provide, inter alia, for amendment of Art. 38(6) and (8) IRAA, in which the requirement to obtain consent in "written form" is replaced by the requirement to obtain "explicit" consent. This will also contribute to the possibility of computerizing the insurance itself. **RECOMMENDATIONS FOR FURTHER ACTIVITIES:** **The MDA and the MF should finalize their work on amending the Act on Insurance and Reinsurance Activity (as part of the implementation of the GDPR) to enable computerization of the process of concluding insurance contracts.**	**During removal**

Consumer and Data Processing Sub-Group

No.	Name and description of barrier (the entity raising it)	Arrangements/actions taken/recommendations	Status of barrier[1] (removed, during removal, not removed, unjustified, beyond the scope of work)
71	**RULES FOR PROCESSING PERSONAL DATA – EXCESSIVE NUMBER OF CONSENTS FOR PROCESSING PERSONAL DATA** (FINTECH POLAND) The current regulations require obtaining a large number of consents from customers in relation to processing of personal data in connection with a particular product/service. Amendment of the relevant legal provisions (e.g. by enabling combining of certain consents in one declaration) should be considered.	In the course of the Task Force's work, a representative of the IGPPD pointed out that the current provisions do not allow combining consents in one declaration, as the Personal Data Protection Act refers to "explicit consent" [wyraźna zgoda]. Nevertheless, the representative pointed out that the GDPR would change the nature of the consent by introducing "explicit consent" [jednoznaczna zgoda] and it is possible that this definition will give greater room to facilitate the process of obtaining consents from customers. The representative also emphasized that it would not be justified to make any changes to the act effective before the entry into force of the GDPR. He stated that on the European level, the Article 29 Working Party, which the IGPPD is a member of, is working on an opinion concerning the granting of consent (the work is planned to be finished by the end of 2017). The representative pointed out that pursuant to that opinion, the IGPPD plans to issue an opinion on whether formerly granted consents would be valid following the entry into force of the GDPR. On the other hand, the MDA drew attention to recital 32 in the preamble to the GDPR, under which, "Consent should cover all processing activities carried out for the same purpose or purposes. When the processing has multiple purposes, consent should be given for all of them." The EU lawmakers thus provided for the possibility to obtain one consent for multiple purposes. **RECOMMENDATIONS FOR FURTHER ACTIVITIES:** **The IGPPD should participate further in the European project for formulating guidelines concerning the use of customers' consent.** **The IGPPD should issue an additional interpretation on the national level with regard to the use of customers' consent, once the European guidelines have been issued.**	During removal
72	**ACCESS BY BANKS, CREDIT UNIONS AND PAYMENT INSTITUTIONS TO DATA PROCESSED IN PUBLIC REGISTERS** (FINTECH POLAND, PBA)	In the course of the Task Force's work, a representative of the PBA pointed out the necessity to provide banks with access to existing public databases to identify and verify customers effectively in performance of public-law duties, inter alia for the prevention of money laundering and terrorist financing. One of the most significant barriers is that banks do not have full access to verification in the Register of Identity Cards (RIC) and the Universal Electronic System for Registration of the Population (PESEL). Currently, banks are able to perform only a zero-one verification (the disclosure of data in this mode results in confirmation of the	During removal

[1] The statuses of the identified barriers are defined as follows: Removed – a barrier has been removed completely, no recommendations for further activities; During removal – certain activities have already been undertaken and/or recommendations for further activities have been formulated; Not removed – a barrier is related to the FinTech field, but no acceptable solution has been worked out in the course of the Task Force's activities; Unjustified – a barrier does not exist; Beyond the scope of work – a barrier does not refer to the FinTech field.

Not only can the openness and digitalization of access to public data speed up trading, it can also save time and money for citizens and the state. As demonstrated by examples of European countries, access to knowledge, including open access to public data, has a significant impact on the economic development of the economy and on building new branches of the innovative financial market (e.g. Denmark, Estonia, and Sweden). It would be justified to make changes to the rules for publishing the data processed in public registers so that the data can be broadly accessible and used by entities of the sector of financial innovations, including banks, credit unions and national payment institutions, to render innovative services.

consistency of the data provided, or a report on the inconsistency of the data). However, to effectively perform their obligations related to counteracting the use of the financial system for money laundering or terrorist financing, as well as other obligations under the Banking Act (e.g. in relation to entry into force of the so-called Dormant Accounts Act), it is necessary to introduce an option for banks to gain free and wider access to information contained in these registers. Furthermore, the PBA representative pointed out the necessity to revise the respective provisions to ensure banks free verification of data from other databases, including TIN, REGON, and CEPiK.

In addition to these demands, the PBA representative emphasized the need to enable banks to confirm PIT returns at tax offices. Banks could cooperate with tax offices through the PBA. This would involve an option for the tax office to verify the authenticity of copies of tax declarations submitted by potential borrowers to banks in order to evaluate their creditworthiness. In the process of granting credits, banks require borrowers to submit their annual PIT return or other tax returns, including confirmation of receipt from the respective tax office. Sometimes customers submit false or inaccurate tax returns to the tax office, submitting copies of those returns to the bank to evaluate their creditworthiness, and then correct the tax returns without informing the bank. This practice leads to fraud by potential borrowers, because the bank evaluates their creditworthiness on the basis of a document containing untrue information. Furthermore, it happens quite often that the bank receives a forged copy of the tax return, including forged confirmation of receipt from the tax office. It may also happen that the original PIT return and the copy differ, but the customer receives a true stamp from the incoming correspondence office of the tax office as acknowledgement of receipt, if the latter fails to verify the consistency of the original and the copy. In the PBA's view, introducing a regulation providing for the possibility for tax offices to verify the authenticity of copies of tax returns submitted to banks by potential borrowers would eliminate these problems.

The PBA representative also emphasized the need to provide banks with an option to automatically confirm certain information with the Social Insurance Institution (ZUS) (e.g. individual monthly reports on due contributions and paid benefits (RCA), certificates on the calculation basis for contributions, the amount of pension/disability allowances received, etc). It was pointed out that ZUS has made it partially possible to confirm online issued tax clearance certificates and the data of the ZUS officer authorized to issue a decision on the pension/disability allowance; nevertheless, the PBA is of the opinion that this possibility is not adequate to current banking activity. In consequence, in the PBA's view, it is justified to request systemic (teleinformatic) changes to provide banks with automatic access in this field. It was emphasized that the point here is to ensure the possibility to verify data on the basis of authorization granted by the customer, in particular for the customer to allow data to be automatically accessed by the bank if the customer obtains access to the ZUS portal using the electronic banking system.

Representatives of the PONBPI and the NACU noted that as in the case of banks, problems with access to existing public databases for customer verification also occur in the sector of credit unions and national payment institutions, which are also obligated institutions within the meaning of AML/CFT regulations. It was agreed that PONBPI and NACU representatives would cooperate with the PBA on work developing solutions involving access to public registers.

In the course of the Task Force's work, it was pointed out that the MDA was working on implementing a central Platform for Integration of Services and Data as a key component of the Information Architecture of the State. This tool will be responsible to maintaining a central register of services, technical integration of systems, and central monitoring and reporting of the availability of services and data disclosed by individual systems. The platform will also be a central component enabling the integration of the systems of the state administration with commercial systems (B2A). The uniform approach to managing the data flow will enable the reuse of data stored in state registers while maintaining strict control over their scope. The process of preparing the platform will also involve construction of a central repository of integration architecture, which will be used to store information on all the data flows between the systems (both state and commercial).

ACTIONS UNDERTAKEN:

The PBA proposed changes to the provisions on banks' access to the RIC and PESEL databases:

- In Art. 46(1) of the Act on Registration of the Population of 24 September 2010 (Journal of Laws 2017 item 657), after point 6, point 7 is added as follows:

  7) to banks, to the extent necessary to perform the obligation to ensure the security of funds stored, as mentioned in Art. 50(2) of the Banking Act of 29 August 1997 (Journal of Laws 2016 item 1988).

- In the Identity Cards Act of 6 August 2010, after point 14, point 15 is added as follows:

  15) banks, to the extent necessary to perform the obligation to ensure the security of funds stored, as mentioned in Art 50(2) of the Banking Act of 29 August 1997 (Journal of Laws 2016 item 1988).

The IGPPD pointed out that the banks' access to data processed in the registers is subject to fulfilling all the requirements arising under provisions on the protection of personal data. The changes proposed by the PBA to the Act on Registration of the Population and the Identity Cards Act will be evaluated by the IGPPD in the course of the legislative process. In the opinion of the IGPPD, the proposed wording of the provisions must be supplemented due to their general nature and the imprecise specification of the objectives and rules for processing such information and methods for ensuring compliance with the rights of data subjects. In the IGPPD's view, it also seems to be necessary to provide for a possibility to exercise real, ex ante control of adequacy if teletransmission would involve access to the database without an application. As demonstrated by experiences from access to the PESEL database by bailiffs, this form of access to data carries a risk of excessive data disclosure. The data controller loses the possibility to verify whether the access to data is justified in each concrete case.

		RECOMMENDATIONS FOR FURTHER ACTIVITIES: **In cooperation with the MIA, the PBA, NACU and PONBPI should undertake activities taking into account the demand by the banking sector concerning access to the RIC database.** **The PBA, NACU, PONBPI and the Ministry of Digital Affairs should undertake activities taking into account the demand by the banking sector concerning access to the PESEL and CEPiK databases.** **In cooperation with the MFLSP, the PBA, NACU and the Ministry of Finance should undertake activities taking into account the demand by the banking sector to confirm PIT returns in tax offices.** **The PBA, NACU and the Ministry of Finance should undertake activities taking into account the demand by the banking sector concerning access to the TIN database.** **In cooperation with GUS, the PBA and NACU should undertake activities taking into account the demand by the banking sector concerning access to the BIN (REGON) database.** **In cooperation with ZUS and the MFLSP, the PBA and NACU should undertake activities taking into account the demand by the banking sector concerning automatic confirmation of certain data in the ZUS database.** **The PBA, NACU and PONBPI should undertake activities to consult proposed solutions concerning access to public registers with the IGPPD in terms of compliance with rules for proper data processing.** **The Ministry of Digital Affairs should implement the central Platform for Integration of Services and Data.**	
73	**RULES FOR PROCESSING PERSONAL DATA – PROCESSING PERSONAL DATA OF NATURAL PERSONS WHO CARRY OUT ECONOMIC ACTIVITY (FINTECH POLAND)** There is a need to regulate comprehensively and explicitly the status of the data of natural persons who carry out economic activity, in light of the provisions on the protection of personal data. It would be desirable to amend the Personal Data Protection Act or the Business Freedom Act accordingly.	In the course of the Task Force's activities it was pointed out that the GDPR generally does not differentiate between the protection level for the data of natural persons who carry out economic activity and the level for the data of natural persons who do not carry out such activity. This means that starting from 25 May 2018 natural persons who carry out economic activity will be covered by the GDPR, unless appropriate provisions limiting the application of the GDPR are introduced for persons who carry out economic activity. In the course of the Task Force's work, the IGPPD posed a question at the European level to members of Article 29 Key Provisions Subgroup about whether it is possible to apply the GDPR to natural persons who carry out economic activity. The question was answered by Norway, Latvia, Denmark, Slovenia, Slovakia, Germany, and the European Data Protection Supervisor. Apart from Latvia, all the data protection authorities supported the application of the GDPR to natural persons who carry out economic activity. In the opinion of the PBA and the PIA, data of business operators (one-person businesses and persons representing legal persons) should be excluded from the scope of application of the GDPR. In economic contacts, business operators (natural persons) use contact data and such data should not be protected in the same way as the data of consumers (customers). It is also relevant that advertising aspects—activity aimed at promoting the enterprise—are inherent to carrying out economic activity. Such activity is a regular component of business operations, and a business operator wants to reach out to as many customers and suppliers	**During removal**

as possible to provide them information about the enterprise and its contact data. As far as the data of a natural person representing a legal person are concerned, the data are already disclosed in the National Court Register (or other public registers), while the very disclosure of the data of a natural person representing legal persons in public registers implies consent to disclosure of the data, and such data should not be protected in the same way as the data of a consumer (customer).

It was agreed that this matter would be the subject of work coordinated by the MDA as part of the implementation of the GDPR.

RECOMMENDATIONS FOR FURTHER ACTIVITIES:

The PBA, PIA and IGPPD should participate in the work on implementation of the GDPR, as coordinated by the MDA, in order to work out a solution concerning the rules for processing personal data of natural persons who carry out economic activity, in the course of the legislative process.

74	**RULES FOR PROCESSING PERSONAL DATA – PROTECTING PERSONAL DATA, USING BIOMETRICS, VERIFYING THE CRIMINAL RECORDS OF PERSONS WITH ACCESS TO FINANCIAL DATA** (FINTECH POLAND) It is necessary to regulate comprehensively the minimum requirements with regard to the security of Big Data and the security of the services rendered through the public internet, e.g. with regard to the guidelines of the supervisory authorities, verification of the criminal records of persons the data controller has authorized to access financial data, as well the use of biometrics to verify the identity of the data subject.	In the course of the Task Force's work, it was pointed out that financial institutions (in particular banks, insurance companies and payment institutions) regard the limited access to data processed in criminal registers as a significant problem (e.g. to verify an employee in terms of his or her lack of a criminal record). It was emphasized that currently the Labour Code allows access to data on criminal records only for members of the management board (for other employees, it is not possible to obtain the relevant data). In light of the universal use of financial services, it is of key importance to protect the information entrusted to entities rendering such services. While the provisions regulating activity in individual sectors of financial services impose a number of obligations on entities to ensure the security of confidential information, the labour law does not give employers any instruments to implement their policy for security of confidential information at the recruitment stage. It was emphasized that persons hired by financial institutions have direct access to protected data. In the course of the Task Force's work, the discussion also focused on financial institutions' use of biometric data of employees. It was pointed out that a legal basis should be created so that financial institutions, as employers, could process certain biometric data of their employees in order to monitor access to premises and confidential information. It was noted that there are many situations where access to individual data or physical rooms, in particular the most confidential ones, is granted following a fingerprint or cornea scan. A representative of the IGPPD pointed out that comprehensive regulations on the use of biometric data are included in the GDPR. Upon the entry into force of the regulation, biometric data will be specially protected thanks to their classification as sensitive data. He emphasized that biometric data are unique and strictly related to a concrete person. The information belongs to the person and is a kind of personal identifier. If it falls into the hands of unauthorized persons, it may lead to identity theft, which may result in serious consequences which are difficult to reverse. Biometric data should be obtained and disclosed only in exceptional situations. Art. 9(2) GDPR provides for exemptions from the general ban on processing such specific categories of personal data, inter alia in the case of explicit consent of the data subject,	During removal

		if it is necessary to process the data in order to fulfil the obligations and exercise specific rights of the data controller or the data subject, in the field of labour law, social security and social protection, if allowed by EU law or the law of the member state. In the course of the Task Force's work, the IGPPD presented a document containing detailed information on the threats related to the use of biometric data. It was agreed that matters concerning access by financial institutions to criminal registers and the use of employees' biometric data will be the subject of work coordinated by the MDA as part of the implementation of the GDPR. **ACTIONS UNDERTAKEN:** **The IGPPD prepared the "Report of the Inspector General for the Protection of Personal Data on the Threats Resulting from the Dissemination of Biometric Data in Contacts by Citizens with Public and Private Institutions"[12]** **RECOMMENDATIONS FOR FURTHER ACTIVITIES:** **The PBA, PIA, PONBPI and IGPPD should participate in the work on implementation of the GDPR, as coordinated by the MDA, in order to work out a solution concerning access by financial institutions to criminal registers and the use of biometric data of employees, in the course of the legislative process.**	
75	**BARRIERS IN THE COMPETITION AND CONSUMER PROTECTION ACT – ABUSIVE CLAUSES** **(FINTECH POLAND)** The act specifies in detail that template consumer contracts must not contain provisions that may be deemed to be prohibited in accordance with Art. 3851 §1 CC. When innovative products are placed on the market, it is often impossible to evaluate what effects the contractual provisions could have, as such evaluation is possible only after several years, thanks to technical and technological progress. Significantly, in the course of control, the contractual provision is deemed to have been invalid from the date of the contract (several years or even a decade or more in the past). Currently, there is no legal basis to effectively remove such provisions (it is necessary to obtain consent from the customer), while the potential inclusion of a clause in the list of provisions deemed prohibited results in significant damage to the business's image, and often unjustified deterioration in how the company is	In the course of the Task Force's work, a representative of the PBA indicated the significance and large scale of the consequences flowing from the failure in Poland to resolve the issue of the removal of abusive clauses from currently binding consumer contracts. He emphasized that under current law, the practical options for removing abusive clauses from existing contracts, while replacing them with new provisions allowing the existing contracts to remain in force, are greatly limited. A representative of the OCCP pointed out that a certain area of these doubts has already been removed by the current provisions on combating unlawful contractual clauses, as the President of the OCCP, before issuing a decision in this respect, may oblige the business to, inter alia, undertake measures to remove the effects of the violation, which may mean an obligation to revise existing contracts used by the business containing abusive clauses (Art. 23c of the Competition and Consumer Protection Act). It does not seem to be a problem when the questioned contractual clause is dropped and a general provision takes its place, and the contract may be performed further. In this situation, it is sufficient for the business to issue a notification that the provision of the formerly concluded contract is null and void. However, a problem arises if it is necessary to recast the particular aspect of the civil-law relation between the business and the consumer. This problem arises in particular in the case of credit agreements indexed or adjusted in a foreign currency. If such a clause is removed as abusive, there is no dispositive regulation to replace the clause. This also raises the problem of determining the validity of the whole contract, and that issue has not been resolved uniformly in the existing case law. On one hand, it may be concluded that it is not possible to correctly perform a contract for indexed credit without specifying the rules for determining the foreign exchange	During removal

[12] http://www.giodo.gov.pl/pl/1520297/10070

viewed by potential customers. Nor is it possible for the OCCP to evaluate a template contract ex ante for provisions deemed prohibited. There is no list of template contractual provisions recognized as not contrary to universally binding provisions. It would be desirable to introduce a legal basis to effectively remove from template contracts any provisions which have been deemed prohibited.

rates which should be used to recalculate the amount of the liability, which makes it necessary to deem the contract either invalid or non-existent. This solution is not always beneficial for consumers, as it means that the credit becomes immediately due. On the other hand, some of the case law favours the replacement of the indexation clause with the general principle of nominalism (using Polish currency and a fixed interest rate).

In the opinion of the OCCP, while demanding potential legislative changes in this field to enable recasting of existing contracts after the removal of certain clauses, it must be borne in mind that there are two paths for proceeding when a prohibited clause is removed from the contract, i.e. the will of the parties, or the possibility mentioned above of replacing the questioned clause with a dispositive regulation, which is not always possible. This is consistent with the objective of Directive 93/13/EC on unfair terms in consumer contracts, which excludes the third solution under which the respective body attempts to devise the "corrected" legal relation between the business and the consumer. This directive states only that abusive clauses are not binding for consumers. This position is also confirmed in the case law of the CJEU. Therefore, the OCCP is of the opinion that caution is required with regard to potential legislative changes in this respect, as this practically comes down to a technical way to remove provisions found to be prohibited from contracts (and not only from template contracts).

As established by the Task Force, the matter concerning abusive clauses is systemic and it is necessary to start appropriate actions in this respect. It was pointed out that this issue also affects other sectors of the market apart from the financial sector.

It was agreed that the OCCP, in cooperation with the MJ, would undertake activities to appoint a special task force to work out an approach to the removal of abusive clauses from concluded contracts.

RECOMMENDATIONS FOR FURTHER ACTIVITIES:

The OCCP should apply to the MJ to undertake activities to appoint a special task force to work out an approach to the removal of abusive clauses from concluded contracts.

76

RENDERING SERVICING ELECTRONICALLY, SENDING COMMERCIAL INFORMATION
(FINTECH POLAND, CPI)

The Electronic Services Act protects business users against receiving unsolicited commercial information to the same extent as it protects consumers. The possibility to effectively

In the course of the Task Force's work, it was pointed out that under current law, it is possible to send commercial information in an opt-out model (i.e. without the user's prior consent) to so-called corporate addresses, related to a legal entity (legal person, institution or company), e.g. marketing@spolka.com, but it is not allowed to send emails with marketing content to addresses assigned to concrete persons working for a company, e.g. jan.kowalski@firma.pl. Considering the need to protect consumers and the burdensome nature of unsolicited marketing communications, the OCCP is of the opinion that the current opt-in model, under which it is necessary to obtain the prior consent of the user to receive commercial information, is correct.

Not removed

	support communications between business entities is blocked by provisions particularly aimed at limiting burdensome practices against consumers. With an eye to stimulating the development of innovation in financial services, it is necessary to introduce an opt-out solution, i.e. the possibility to send information unless rejected by the recipient.	In the course of the Task Force's work, it was agreed that due to the need to protect consumers, it is not possible to amend these provisions. It was agreed that the Task Force would not undertake further activities in this regard.	
77	**THE REQUIREMENT OF WRITTEN FORM FOR CONSUMER CREDIT CONTRACTS (CPI, CFC)** Under Art. 29(1) of the Consumer Credit Act, a contract for consumer credit must be concluded in written form, unless a specific form is specified in separate provisions. This requirement does not result from Art. 10(1) of the Consumer Credit Directive (2008/48/EC), in accordance with which contracts for consumer credit may be drawn up in paper form or on any other durable medium. In practice, the requirement for written form is not binding for banks, which apply Art. 7 of the Banking Act. The problem is experienced by other entities granting consumer credit, e.g. lending institutions. It may also refer to innovative credit agents. The requirement for written form is particularly burdensome for innovative businesses operating and rendering services exclusively in the internet environment. Although so-called document form was introduced to the CC in September 2016, there are certain statutes whose specific provisions still require contracts to be concluded in written form. Similar barriers do not exist in many countries in Europe, and the whole process of granting a loan may take place online. It would be desirable to amend Art. 29(1) of the Consumer Credit Act by tracking the wording of Art. 10(1) of the Consumer Credit Directive (2008/48/EC), i.e. by providing for the possibility to conclude a consumer credit contract in a form other than written form (e.g. by repealing the current wording of Art. 29(1) of the Consumer Credit Act and replacing it with the equivalent of Art. 7b of the Banking Act, to ensure the clarity of regulations).	In the course of the Task Force's work, it was pointed out that it is not possible to conclude consumer credit contracts in electronic form, which significantly hinders the development of innovation. It was indicated that even the CC provides for document form, in response to technological changes. It was emphasized that the written form of the contract requires the physical presence of two parties (e.g. the contract should be signed in a branch office or in the presence of a courier). The contract may not be deemed to be concluded in written form if the contract is signed by the customer, scanned and sent to the bank. In the opinion of the OCCP, due to the need to protect the interests of consumers, written form for consumer credit contracts should be maintained, while the subsequent delivery of the content of the contract to the consumer, which may be executed in paper or any other durable medium, is a secondary issue. It was agreed that in order to remove this barrier it would be necessary to amend the Consumer Credit Act. It was agreed in the course of the discussion that it would be necessary to consider a solution under which written form would be of a default (basic) nature, but electronic form could be used at the request of the customer. This solution would ensure the development of innovative entities operating exclusively in the internet environment. It was agreed that the OCCP would consult the matter with the MF. **RECOMMENDATIONS FOR FURTHER ACTIVITIES:** **In cooperation with the MF, the OCCP should analyze the possibilities to relax the regime of written form in the Consumer Credit Act, provided that consumer interests are properly protected.**	**During removal**

78

AMBIGUOUS DEFINITION OF "DURABLE MEDIUM" (CPI, PBA)

Numerous regulations (consumer and financial) provide for the definition of a "durable medium" and for the obligation for providers of financial services to transfer information on a durable medium. In practice, there are multiple doubts as to the interpretation of the term "durable medium", leading to administrative and court proceedings. There is no uniform interpretation as to what qualities a "durable medium" should have. This is particularly important in the context of activity carried out by innovative entities. It would be desirable to issue clear interpretations of the term "durable medium", which would be open to innovation while maintaining an appropriate level of consumer safety.

The issue of using a "durable medium" for information, which is defined in Art. 2(30) PSA, was discussed by the Task Force many times. It was pointed out that the OCCP was currently conducting investigations with certain banks to evaluate their fulfilment of information requirements with respect to their customers. The OCCP shares the position of the Court of Justice of the European Union (CJEU), whose judgment of 25 January 2017 addressed the issue of whether messages transmitted through the electronic mailbox of an electronic banking system can be deemed to be provided to the user on a "durable medium" as specified in the PSD. In the opinion of the OCCP, internal systems of banks in their current form do not meet the conditions for a "durable medium" of information, because they are completely under their control, and thus the consumer cannot be certain that the content will not be changed by the bank. Furthermore, financial institutions do not provide access to such messages after the contract ends, and also force consumers to seek information on whether a notification of changes has been made available in the service.

A representative of the PBA pointed out that in relation to the investigations conducted by the OCCP, the past activity of banks before the date of the CJEU judgment on treating electronic banking systems as a "durable medium" is a significant problem for the banks. He claimed that during that period the banks had a sense of legal certainty that such practice was allowed. It was agreed in the course of the discussion that until the completion of the investigations by the OCCP it would not be possible to resolve this matter from the past, but it would be desirable to work out solutions for the future.

In the course of the work, the KNF Office wrote to the MFA to obtain an opinion on the admissibility of amending national law on the basis of CJEU case law. In its response, the MFA pointed out that the judgment of the CJEU does not seem to provide a basis for interpreting or supplement the definition of "durable medium" beyond the examples mentioned in the grounds for the directive and in the judgment itself. The MFA also pointed out the issue of potentially amending the national provisions to specify the conditions that must be fulfilled so that the information stored on the service provider's website could be deemed to be provided to the consumer on a "durable medium" should be analyzed.

The PBA representative pointed out that bank customers expect the terms and conditions to specify clear legal provisions and it would not be justified to refer customers to the CJEU judgment, and thus it would be necessary to formulate additional provisions laying down the requirements to be fulfilled by the customer's account in the electronic banking system in order to comply with the provisions on "durable medium".

Due to the systemic nature of the "durable medium" issue, it was agreed that it would be justified to undertake activities to resolve this problem. It was also pointed out that it was not necessary to modify the definition of "durable medium" in individual industry statutes, as they are interpreted in a similar way. It was emphasized that the term "durable medium" in EU law is used uniformly not only in the regulations concerning the financial services sector (e.g. on payment services, consumer credit, and real estate credit), but also other regulations protecting the interests of consumers (e.g. in the sectors of tourism, telecommunications, consumer sales, etc).

In the course of the Task Force's work, a working meeting was organized for representatives of the KNF Office, the OCCP and the PBA to discuss the durable medium issue. It was agreed at the meeting that the banking sector would undertake activities to work out a sector-based solution with regard to the durable medium issue which would be consistent with the legal provisions and the requirements of the CJEU.

During removal

In consultation with the MF, the OCCP also analyzed the issue of potentially clarifying the national provisions in relation to the letter from the MFA and the published judgment of the CJEU concerning "durable medium". In the opinion of the OCCP, the definition of "durable medium" may not be modified due to the maximum harmonization of the PSD. In light of the rich and quite restrictive case law of the CJEU concerning the issue of maximum harmonization, any modification of a definition that is uniform across EU legislation would expose Poland to the allegation that it is not complying with EU law. In the opinion of the OCCP, the current definition is clear and formulated in a way that takes into account the changing legal and market circumstances and technological progress. The OCCP consistently stressed that the currently common functionality of a user account on the website of the financial service provider (e.g. lender) or other business (e.g. telecom) and the website of the business itself cannot be deemed to constitute a durable medium, because the business can amend or delete the website content and the user's account after conclusion of the contract, and there is no guarantee that the information on the website will be accessible at all to the consumer in the future. Based on the experiences of the OCCP, many businesses interpret the term "durable medium" very broadly and deem information published on their website and subject to their full control to be provided on a durable medium. As in the case of banks using electronic banking systems for this purpose, the information required by law is provided not on a durable medium, but via electronic customer service points which do not have the features of a durable medium. This creates difficulties for consumers seeking access to information they are entitled to by law and makes access dependent on the will of the business. In consequence, consumers' ability to effectively protect their interests may be significantly limited or made impossible, while in the long term such practices may result in increased mistrust among consumers and a diminished willingness to conclude contracts on a remote basis. The President of the OCCP also points out that it cannot be excluded upfront that a user account on the website of the business (e.g. lender) may fulfil the criteria specified in the CJEU judgment, but to make this happen it would be necessary to modify technically the current channels of websites of businesses and accounts of users (e.g. borrowers) created on such websites, as currently channels of this type do not fulfil these conditions. Consequently, the OCCP does not claim that these conditions cannot be fulfilled by any business website in the future, but such channels of "electronic banking" currently existing on the market do not fulfil the criteria of a durable medium. Thus, it is not excluded that websites of businesses will be able to fulfil these criteria in the future.

In the opinion of the OCCP, the issue of the excessively narrow interpretation of the term "durable medium" referred to by the market participants is in fact of a technical not legal nature. Nor is it necessary to formulate additional provisions specifying the requirements mentioned in the judgment of the CJEU to be fulfilled by a user account on an electronic banking system to ensure compliance with the provisions on "durable medium" in the area of payment services.

RECOMMENDATIONS FOR FURTHER ACTIVITIES:

In cooperation with the NACU, the PBA should devise a sector-based solution with regard to "durable medium" which is consistent with the legal provisions and the judgment of the CJEU.

79

EXCESSIVELY STRICT BAN ON TAKING DECISIONS IN INDIVIDUAL MATTERS EXCLUSIVELY ON THE BASIS OF AUTOMATIC PROCESSING OF PERSONAL DATA (CPI)

Art. 26a(1) of the Personal Data Protection Act prohibits a final decision on an individual matter of a data subject when the substance of the decision results exclusively from an operation on personal data in an IT system. This is a barrier to the development of financial products and services, e.g. where automatic credit scoring is used. It would be desirable to introduce a rule (consistent with the General Data Protection Regulation which will come into force in May 2018) that a final decision on an individual matter of a data subject resulting from automatic data processing is possible if the person consents.

In the course of the Task Force's work, a representative of the IGPPD pointed out that Art. 4(4) GDPR defines "profiling" as "any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements". A data controller will be able to use profiling if it proves an appropriate legal basis for profiling, i.e. the consent of the data subject, performance of a contract or activities before concluding the contract, performance of an obligation specified by law, protection of the vital interests of the data subject, performance of tasks in the public interest, or processing necessary to implement the legitimate interests of the data controller. During profiling, the data controller must inform the data subject of the automated decision-making process. It is also provided in Art. 35 GDPR: "Where a type of processing in particular using new technologies, and taking into account the nature, scope, context and purposes of the processing, is likely to result in a high risk to the rights and freedoms of natural persons, the controller shall, prior to the processing, carry out an assessment of the impact of the envisaged processing operations on the protection of personal data."

A representative of the CPI expressed an opinion that the introduction of an option to take decisions in individual matters exclusively on the basis of automatic processing of personal data would contribute to the development of innovative financial services. This opinion was shared by a representative of the PIA, who presented an example of the possibility to issue decisions on insurance matters (claim administration) in a fully automated process.

The IGPPD representative emphasized that in accordance with the GDPR, only comprehensive regulations guaranteeing the protection of the individual's rights (including those ensuring the transparency of the process of data processing and the possibility to appeal against the decision taken on the basis of automated processing of personal data) can provide a legal basis for both an automated decision-making process in individual cases and processing of specially protected data. In accordance with the GDPR, situations in which profiling is admissible include situations where the decision taken on the basis of the automated data processing is necessary to conclude or perform a contract between the data subject and the controller, is authorized by EU law or the law of the member state the controller is subject to, and lays down suitable measures to safeguard the data subject's rights and freedoms and legitimate interests, or is based on the data subject's explicit consent.

It was agreed that this matter would be the subject of work coordinated by the MDA as part of the implementation of the GDPR.

RECOMMENDATIONS FOR FURTHER ACTIVITIES:

The CPI and PIA and the IGPPD should participate in the work on the implementation of the GDPR, as coordinated by the MDA, in order to work out solutions enabling decisions to be taken in individual cases on the basis of the automated processing of personal data, in the course of the legislative process.

During removal

80	**UNJUSTIFIED LIMITATIONS ON THE PROCESSING OF SENSITIVE DATA DUE TO THE REQUIREMENT OF WRITTEN FORM OF THE CUSTOMER'S CONSENT (CPI)** In accordance with Art. 27(2)(1) of the Personal Data Protection Act, the processing of so-called sensitive data is admissible only when the data subject consents in written form. Much data related to financial innovations may be deemed to constitute sensitive data, while the requirement of written form hinders the activity of FinTech entities offering their services only digitally. Moreover, under Art. 46(2) of the Personal Data Protection Act, a controller of sensitive data may begin processing them only after the filing system is registered. Due to the often long time for registering filing systems, the implementation of innovations on the financial market is suspended. It would be desirable to remove these requirements, particularly as they are not included in the EU's General Data Protection Regulation which will come into force in May 2018.	In the course of the Task Force's work, it was pointed out that Art. 9(2)(a) GDPR allows processing of specific categories of personal data only if "the data subject has given explicit consent to the processing of those personal data for one or more specified purposes". Therefore, it was pointed out that replacing the term "written consent" with "explicit consent" in certain national provisions would be consistent with EU law and enable the development of innovative financial services. It was emphasized at the same time that whether consent is granted effectively, ensuring its "explicit" character, depends on the phrasing of the clause granting consent, which is one of the duties of the controller. This refers to the transparency and precise formulation of the clause, which is an additional element justifying the adequacy of the explicit consent granted by the data subject. It was agreed that this matter would be the subject of work coordinated by the MDA as part of the implementation of the GDPR. **RECOMMENDATIONS FOR FURTHER ACTIVITIES:** **The CPI and PIA and the IGPPD should participate in the work on the implementation of the GDPR, as coordinated by the MDA, to remove the limitations related to processing of sensitive data due to the requirement of written form of the customer's consent, in the course of the legislative process.**	During removal
81	**WRITTEN FORM OF RESPONSE TO COMPLAINT SUBMITTED IN ELECTRONIC FORM (CPI)** In accordance with Art. 3(2) of the Act on Consideration of Complaints by Financial Market Entities and on the Financial Ombudsman, complaints may be submitted in written form. On the other hand, Art. 5(1) of the act states that the complaint should be answered in paper form or using any other durable medium of information, and by email only at the request of the customer (Art. 5(2)). Entities offering innovative financial solutions often operate exclusively in cyberspace. Their users are used to contacts only via internet. However, the aforementioned obligation requires these entities to be prepared to process complaints in paper form. It would be desirable to amend these provisions so that complaints would not have to be handled in written form when it is not necessary or feasible.	In the course of the Task Force's work, a representative of the CFC pointed out that irrespective of the form for submitting a complaint chosen by the consumer, the answer to the complaint, under Art. 5 of the Act on Consideration of Complaints by Financial Market Entities and on the Financial Ombudsman, is given in paper form or using any other durable medium of information, and by email only at the request of the customer. He pointed out that the practice of responding in written form is not justified for customers of FinTech entities, who are used to contacts only via internet. Customers think that by submitting a complaint by email they are specifying this path of communication, but this cannot be maintained due to the current wording of Art. 5 of the act. This generates misunderstandings on their side, which are then directed to the entities, which are viewed as not being very modern. It was agreed that the CFC would prepare a proposal to amend the provisions, which will be consulted with the Financial Ombudsman and the OCCP. **ACTIONS UNDERTAKEN:** **In cooperation with the Financial Ombudsman and the OCCP, the CFC proposed a legislative change to enable the answering of complaints in electronic form if the complaint was submitted in that form and the customer has not requested an answer in paper form or using any other durable medium of information.**	During removal

1. The following wording is proposed for Art. 5(2) of the Act on Consideration of Complaints by Financial Market Entities and on the Financial Ombudsman of 5 August 2015 (the "FO Act"):

   Art. 5(2). An answer mentioned in par. 1 may be delivered by a financial market entity by email exclusively at the request of the customer, unless the customer has submitted the complaint by email and has not requested to be given a response in paper form or using any other durable medium of information.

The Financial Ombudsman takes the position that if the customer submits a complaint by email, the answer may also be given by email unless the customer has requested that the answer be given and delivered in paper form or using any other durable medium of information. Thus in the case of such a request, the answer cannot be delivered by email. Nevertheless, the Financial Ombudsman is of the opinion that the customer should have the right to request that the answer be given by email even if he or she did not submit the complaint in this form; thus it is necessary to maintain the rule that the answer may be delivered in electronic form if requested by the customer.

It should also be pointed out that the amendment of Art. 5(2) of the FO Act will have an impact on the interpretation and application of Art. 4 of the act, which means that it will have an impact on the information obligations of financial market entities. In other words, financial market entities will be obliged to specify in the contract with the customer (and in the situation mentioned in Art. 4(1) of the act) that they have the right to request an answer by email when the complaint was submitted in written or oral form. Furthermore, financial market entities will be obliged to inform the customer that if the complaint was submitted by email and it has not been requested to give an answer in written form or using any other durable medium, the answer will be given by email.

2. The following wording is proposed for Art. 5(1) of the Act on Consideration of Complaints by Financial Market Entities and on the Financial Ombudsman of 5 August 2015:

   Art. 5(1). After the customer has submitted a complaint in accordance with the requirements mentioned in Art. 4 ~~(1)(1)~~, the financial market entity shall examine the complaint and give an answer to the customer in paper form or using any other durable medium of information.

This provision is modified as a result of the proposed amendment of Art. 5(2) of the FO Act. Such a provision would fully ensure that financial market entities are obliged to inform customers that if a complaint has been submitted in written or oral form, the customer has the right to request that the answer be given by email, and will also be obliged to inform customers that if the complaint has been submitted by email and it has not been requested to give an answer in paper form or using any other durable medium of information, the answer will be given by email.

m. As of now, the obligation to examine the complaint arises upon its submission "in accordance with the requirements mentioned in Art. 4(1)(1)" of the FO Act, i.e. those reserved in the contract. However, it should be pointed out that Art. 4(2) of the FO Act refers to customers who have not concluded a contract and, if this is the case, they shall be informed by the entity within 7 days from receipt of the claim concerning the conditions for submitting complaints. This mostly refers to the insurance market (insureds, beneficiaries). This is not reflected at all in Art. 5(1) of the FO Act. Therefore, it is proposed to amend Art. 5(1) of the FO Act to refer to Art. 4 of the act generally. It would be clear then that the issue refers to the requirements specified in the contract or after raising the claim.

		RECOMMENDATIONS FOR FURTHER ACTIVITIES: **The MF should take into account the proposed amendment of the Act on Consideration of Complaints by the Financial Market Entities and on the Financial Ombudsman.**	
82	**IMPRECISE REGULATION OF SO-CALLED MISSELLING, I.E. THE SALE OF PRODUCTS NOT SUITED TO THE CONSUMER'S NEEDS (CPI)** Art. 24(2)(4) of the Competition and Consumer Protection Act of 16 February 2007 provides that it is a practice violating the collective interests of consumers to propose to consumers to purchase financial services which do not correspond to their needs as established based on the information available to the undertaking with regard to the characteristics of the consumers, or to propose services in a manner inappropriate to their nature (so-called misselling). The scope of this provision is very broad and it should be clarified. In particular, it is not clear for entities offering innovative financial services, as they often use non-standard distribution channels. It is necessary to regulate misselling. However, it is necessary to specify in more detail the criteria to be taken into account when determining whether a particular phenomenon is misselling. This may be done by issuing a position or guidelines of the OCCP.	A representative of the OCCP pointed out that the provisions on misselling, as mentioned in Art. 24(2)(4) of the Competition and Consumer Protection Act of 16 February 2007, are generally new and the OCCP is still gathering experiences on how they are applied by market entities. The OCCP does not exclude that guidelines will be formulated as to how the term "misspelling" should be interpreted; however, to avoid the creation of a purely theoretical concept, it is justified to gather certain material on the basis of the application of this provision in practice, and such material has not been gathered yet. **RECOMMENDATIONS FOR FURTHER ACTIVITIES:** **After gathering practical material, the OCCP should consider issuing guidelines on the application of Art. 24(2)(4) of the Competition and Consumer Protection Act (misselling).**	**During removal**
83	**THE FORM FOR PERFORMING THE CREDITOR'S INFORMATION OBLIGATION IN RELATION TO ENTRY IN THE EIB (CFC)** The current form for performing the information obligation with respect to the debtor in relation to registration of the customer in the EIB (payment demand, registered letter) increases the operational costs incurred by lenders (service providers) operating in an online model. It also limits the availability of information about customers, as less information is submitted to the EIB databases (due to the costs). The changes included in the so-called Creditors' Package provide for the possibility to send payment demands in electronic form to an email address, upon the consent of the debtor	In the course of the Task Force's work, it was pointed out that the Act of 7 April 2017 Amending Certain Acts to Facilitate the Enforcement of Claims introduced changes to the Act on Disclosure of Economic Information and Exchange of Economic Data of 9 April 2010, *inter alia* by adding Art. 15(1a) to provide for the possibility of transmitting a payment demand to a non-consumer debtor in electronic form, but only as an option alongside a payment demand in traditional form, i.e. registered letter or personal service. The option states that the creditor will be able to transmit a payment demand in electronic form if the debtor other than a consumer has consented in the contract with the creditor. It was emphasized that Art. 14 of the act, with regard to the form for delivering a payment demand and warning that the data will be submitted to the EIB, has not been changed. A representative of the OCCP stated that the use of payment demands in electronic form was introduced by lawmakers carefully and it was intended that the amendment would not cover the form for providing information to consumer debtors so that the functioning of electronic payment demands under the B2B practice could be examined first. The OCCP is of the opinion that at the current stage, with regard to the demand raised in this barrier, it should be deemed unjustified to introduce an analogous provision with respect to consumers, entities with a weaker position on the market. The aim of a payment demand was pointed out,	**Not removed**

	expressed in the contract; however, this change does not apply to consumers. It should be possible to send payment demands in electronic or document form, or provide the relevant information using a durable medium.	which for the security of commerce should "for certain" be delivered to a consumer debtor (by registered letter or in person), and the debtor should be reminded of the arrears and be mobilized to make the payment before the data are submitted to the Economic Information Bureau. Unlike businesses, consumers may not be fluent in the use of email, and may even not have access to it, so the demand to replace registered letter or personal service with electronic notification is excluded from the point of view of the OCCP. It was agreed that the Task Force would not work further on this barrier. Nonetheless, the party raising this barrier (CFC) asserts that sending a payment demand is an information obligation that may be performed much more efficiently in electronic form—cheaper, faster and more effectively, while maintaining an appropriate level of data security. According to the CFC, the Act on Disclosure of Economic Information and Exchange of Economic Data is an exception in the whole legal system, as it is the only example of an information obligation of a business with respect to a consumer which must be performed by registered letter. All other legal acts permit information to be provided in electronic form, e.g. the Consumer Credit Act, the Consumer Rights Act (durable medium). Furthermore, the CFC points out that the use of electronic form would be dependent on obtaining the consumer's consent in the contract.	
84	**CONSTRUCTION OF THE CONSUMER'S CONSENT TO VERIFICATION IN THE EIB (CFC)** The legally required consent (authorization) of a consumer to be checked in the EIB database is valid for 30 days from the date it is granted. This means in practice that the authorization enables only one check to be performed. This solution is sufficient at the pre-contractual stage, but does not enable updating of the evaluation of the consumer's creditworthiness at the stage following conclusion of the contract, which is important in terms of credit risk management. This difficulty is particularly burdensome for lenders (service providers) operating in an online model, without direct contact with the customer. It should be possible to grant a framework authorization valid until the liabilities under the contract with the lender (service provider) expire, or until the authorization is withdrawn by the consumer.	In the course of the Task Force's work, it was pointed out that the Act of 7 April 2017 Amending Certain Acts to Facilitate the Enforcement of Claims introduced changes to Art. 24(1) of the Act on Disclosure of Economic Information and Exchange of Economic Data of 9 April 2010, involving extension of the validity of an authorization to check a consumer's creditworthiness in the Economic Information Bureau from 30 to 60 days. The OCCP takes the position that this period is sufficient. According to the OCCP, it is not justified from the point of view of the consumer's interests for the consumer to be able to grant a framework authorization valid until the liabilities under the contract with the lender (service provider) expire or the consumer revokes the authorization. This position is also supported by the IGPPD, which points out that the current provisions protect the consumer against the situation in which a business relying on a one-time authorization by the consumer could submit queries concerning the consumer's liabilities to the Economic Information Bureau many times, over any period. Furthermore, the MED is of the opinion that it would be unjustified from the legislative point of view to amend these provisions once again in such a short time. It was agreed that the Task Force would not undertake further activities on this issue. Nonetheless, the party raising this barrier (CFC) asserts that the solution involving the introduction of a rigid, closed validity period for the authorization—which is essentially a specific form of consent to processing of personal data—is an unjustified exception to the general rule that such consent is granted for an indefinite period, while maintaining the right to revoke it at any time (Art. 7(5) of the Personal Data Protection Act). The rule of an indefinite period applies even with regard to an authorization by a bank customer to disclose to a third party information covered by banking secrecy, access to which is protected very restrictively (see Art. 104(3) of the Banking Act, which does not specify any validity period for the authorization).	**Not removed**

		In the opinion of the CFC, the point in granting the consumer's authorization valid for the duration of the liability is to introduce the possibility to monitor the creditworthiness of the consumer during the term of the contract, until the liabilities are paid in full, which would make it possible for the creditor to swiftly react to problems related to servicing other liabilities, e.g. by amending the payment schedule, restructuring the liability, obtaining additional security, etc. The creditor could not use the data for any other purposes, as that would violate the Act on Disclosure of Economic Information and Exchange of Economic Data, as well as the rules for processing personal data. Furthermore, all consumers have legally guaranteed control over the disclosure of their data, through the right to access the register of queries in which all queries submitted during the last 12 months are recorded, whereby the consumer may control the frequency of queries to the database and revoke the authorization at any time after the end of its minimum period of validity.	

Crowdfunding Sub-Group

No.	Name and description of barrier (the entity raising it)	Arrangements/actions taken/recommendations	Status of barrier[1] (removed, during removal, not removed, unjustified, beyond the scope of work)
85	**THE LACK OF LEGAL CERTAINTY AS TO THE OPERATION OF CROWDFUNDING PLATFORMS IN POLAND[14]** **(FINTECH POLAND, CPI, CFC)** Crowdfunding, as an alternative to credits, bonds and loans, enables financing of many innovative projects (in particular at their initial stage), which can generate profits and bring favourable effects for the economy in future. It is necessary to ensure a transparent regulatory and legal environment for the further development of crowdfunding platforms in Poland. There is a need to clarify thoroughly any doubts in interpretation on the application of Polish legal provisions to the operation of existing crowdfunding platforms. In particular, doubts related to the application of the following statutes should be clarified: • Electronic Services Act of 18 July 2002 • Act on Rules for Conducting Public Collections of 14 March 2014 • Act on Public Offerings and Conditions for Introduction of Financial Instruments into an Organized System of Trading and on Public Companies of 29 July 2005	The Task Force agreed that to undertake further activities related to the clarification of doubts in interpretation as to the application of legal provisions on crowdfunding, it was necessary to prepare detailed descriptions of typical crowdfunding models in Poland. This material was prepared by the CFI, CFC and FinTech Poland, and the five most common models of crowdfunding were singled out, including: 1) donation-based crowdfunding (charity), 2) reward-based crowdfunding, 3) pre-sales crowdfunding, 4) crowdinvesting (equity-based), 5) crowdlending (peer-to-peer lending). The Task Force found that at the current stage of development of crowdfunding in Poland, it is not justified to introduce separate regulations in this field, but it is necessary to undertake activities to enhance legal certainty among market participants under the current provisions. In particular, this refers to the risk that activities carried out by natural persons granting loans to other natural persons under crowdlending would be deemed to be economic activity, and the unclear legal and tax status of peer-to-peer lending. In this context, the MED pointed out that work is underway on the draft Business Law, to replace the Business Freedom Act, in which there is a proposal to introduce the institution of "unregistered activity". Under this proposal, economic activity by a natural person whose income from this activity does not exceed 50% of the minimum monthly wage specified in the Minimum Wage Act in any month would not be treated as economic activity. During the work of the Task Force, it was determined that this legislative proposal could also apply to social lending activities, as long as the lender's income falls within a certain limit.	During removal

[13] The statuses of the identified barriers are defined as follows: Removed – a barrier has been removed completely, no recommendations for further activities; During removal – certain activities have already been undertaken and/or recommendations for further activities have been formulated; Not removed – a barrier is related to the FinTech field, but no acceptable solution has been worked out in the course of the Task Force's activities; Unjustified – a barrier does not exist; Beyond the scope of work – a barrier does not refer to the FinTech field.

[14] During the work of the Task Force, 12 barriers related to crowdfunding were identified, but for the purposes of the Report they were combined into one barrier, pointing to a lack of legal certainty in this field.

- Trading in Financial Instruments Act of 29 July 2005
- Act on Investment Funds and Management of Alternative Investment Funds of 27 May 2004
- Business Freedom Act of 2 July 2004
- Personal Income Tax Act of 26 July 1991
- Payment Services Act of 19 August 2011
- Banking Act of 29 August 1997.

It was also pointed out that in relation to the amendment of the Trading in Financial Instruments Act driven by the need to implement MiFID II, it is planned to amend Art. 72 of the act defining the offering of financial instruments, which is related to crowdinvesting. It was established that to enhance the legal certainty on the definition of the offering of financial instruments in light of the new provisions, the KNF Office will devise, on the basis of examples presented by the community of crowdfunding platforms, a practical position indicating which activities may be classified as the offering of financial instruments. The position would be published after entry into force of the new provisions.

In the course of the Task Force's work, proposed changes to the Public Offerings Act were worked out to simplify the procedure for submitting offerings with a value of up to EUR 1 million. This change would make it possible to increase the value of investments carried out via crowdinvesting, but without imposing excessive burdens on entities seeking financing under this approach (see Barrier No. 57).

As agreed by the Task Force, an important component of the non-statutory regulations on crowdfunding platforms should include market best practices, in particular with regard to risk management. They would enable standardization of the business practices of the whole market and serve as a tool for building the image of the sector and the security of market participants. The CFC undertook to formulate such a document and invite all entities of the Polish crowdfunding market to adopt it.

ACTIONS UNDERTAKEN:

In cooperation with the CFC, CPI and FinTech Poland, the KNF Office prepared a description of the identified crowdfunding models with an indication of the applicable laws (see Annex No. 2 to the Report).

RECOMMENDATIONS FOR FURTHER ACTIVITIES:

The CFC should work out market best practices with regard to the operation of crowdfunding platforms in Poland.

The Ministry of Economic Development should finalize the work on the Business Law in terms of implementing so-called unregistered economic activity, which could cover social lending activities as a form of crowdlending.

The KNF Office should prepare guidelines concerning the application of the amended Art. 72 of the Trading in Financial Instruments Act which will enter into force with the new provisions implementing MiFID II.

LIST OF ABBREVIATIONS USED IN THE DOCUMENT

NAMES OF INSTITUTIONS

CBH	Chamber of Brokerage Houses
CDB	Council of Depository Banks
CFAM	Chamber of Fund and Asset Management
CFC	Conference of Financial Companies in Poland
CJEU	Court of Justice of the European Union
CPI	Coalition for Polish Innovations
CU	credit union
EIB	Economic Information Bureau
FinTech Poland	FinTech Poland Foundation
FO	Financial Ombudsman
GLC	Government Legislation Centre
GUS	Central Statistical Office of Poland
IFC	investment fund company
IGFI	Inspector General of Financial Information
IGPPD	Inspector General for the Protection of Personal Data
KDPW	National Depository for Securities
KNF	Polish Financial Supervision Authority
KNF Office	Office of the Polish Financial Supervision Authority
KRUS	Agricultural Social Insurance Fund
MARD	Ministry of Agriculture and Rural Development
MDA	Ministry of Digital Affairs
MED	Ministry of Economic Development
MEDF	Minister of Economic Development and Finance
MF	Ministry of Finance
MFA	Ministry of Foreign Affairs
MFLSP	Ministry of Family, Labour and Social Policy
MH	Ministry of Health
MIA	Ministry of the Interior and Administration
MIC	Ministry of Infrastructure and Construction
MIFC	mutual investment fund company
MJ	Ministry of Justice
MSHE	Ministry of Science and Higher Education
NACB	National Association of Cooperative Banks
NBP	National Bank of Poland
NCH	National Clearing House
NACU	National Association of Credit Unions
NPI	national payment institution
OCCP	Office of Competition and Consumer Protection
PBA	Polish Bank Association
PIA	Polish Insurance Association
PONBPI	Polish Organization of Non-Banking Payment Institutions
SLI	State Labour Inspectorate
SPI	small payment institution
WSE	Warsaw Stock Exchange
ZUS	Social Insurance Institution

LEGAL ACTS AND OTHER REGULATIONS

AMLD4	Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing
CC	Civil Code of 23 April 1964
CCC	Commercial Companies Code of 15 September 2000
eIDAS	Regulation (EU) No. 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC
GDPR	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)
IDD	Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution
IFMAIFA	Act on Investment Funds and Management of Alternative Investment Funds of 27 May 2004
IRAA	Act on Insurance and Reinsurance Activity of 11 September 2016
MiFID II	Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU
PPL	Public Procurement Law of 29 January 2004
PSA	Payment Services Act of 19 August 2011
PSD	Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market
PSD2	Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market
Solvency II	Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of insurance and reinsurance

GLOSSARY OF OTHER TERMS

AML	anti-money laundering
blockchain	blockchain technology
CDBA	Central Database of Accounts
CEPiK	Central Register of Vehicles and Drivers
CIT	corporate income tax
CRD	Central Register of Drivers
DLT	distributed ledger technology
EEA	European Economic Area
EPS	employee pension scheme
ePUAP	Electronic Platform of Public Administration Services
ESIT	Electronic System for Information Transmission
FinTech	financial technology
GIC	general insurance conditions
IPA	individual pension account
IPSA	individual pension security account
KRS	National Court Register
NHF	National Health Fund
PESEL	Universal Electronic System for Registration of the Population
PIT	personal income tax
R&D	research and development
REGON	Register of the National Economy
RegTech	regulatory technology
RIC	Register of Identity Cards
TERYT	National Official Register of the Territorial Division of the Country
TIN	Tax Identification Number

Annex No. 2

– Models of crowdfunding in the light of applicable provisions of law

This document is a result of the work of the Special Task Force for Financial Innovation in Poland (the "Task Force") with regard to the reported doubts in interpretation as to the application of Polish law to crowdfunding in the financial market. The material refers to the description of the models of crowdfunding prepared by the Conference of Financial Companies in Poland (CFC), the Coalition for Polish Innovations (CPI) and the FinTech Poland Foundation. As agreed by the Task Force, at the current development stage of crowdfunding in Poland it is not justified to introduce separate regulations in this field, but it is necessary to undertake activities to enhance legal certainty among market participants under the current provisions.

I. DEFINITION OF CROWDFUNDING

The most popular types of crowdfunding include:

1. **DONATION-BASED CROWDFUNDING**
2. **REWARD-BASED CROWDFUNDING**
3. **PRE-SALES CROWDFUNDING**
4. **CROWDINVESTING (EQUITY-BASED)**
5. **CROWDLENDING**
   (often referred to as "social lending" or "peer-to-peer (P2P) lending").

Models 1–3 are jointly called "crowdsponsoring".

In the European Commission's Communication of 14 March 2014[1], CROWDFUNDING is defined as crowd financing which generally refers to an open call to the public to raise funds for a specific project. Such calls are mostly published and disseminated via internet and are valid only during specific timeframes.

[1] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 27 March 2014 "Unleashing the potential of Crowdfunding in the European Union" (http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM:2014:172:FIN)

II. MODELS OF CROWDFUNDING AND CURRENT PROVISIONS OF LAW

1. DONATION-BASED CROWDFUNDING (CHARITY)

Donation-based crowdfunding is philanthropic and does not involve any form of reward, except for possible thanks (the project initiator is not obliged to render any consideration to the donor in return). This model is mostly used for social projects, i.e. those not performed for a profit, and are mostly initiated by foundations and associations, but also by enterprises. This is a way to finance projects related to charity actions, aid, research, etc. Typically, projects which are not a continuous collection have a minimum amount (known as "100% threshold", although the threshold may be exceeded many times during the campaign) and a specific timeframe. But projects do not have to reach the established minimum amount: the initiator may receive the amount collected during the campaign irrespective of its value (the "keep what you raise" principle). Some platforms do not charge any commissions on donations, and each donor is free to make a donation to the platform. Following the successful financing of the project, the initiator of the campaign may use the funds to cover any costs of the collection.

CURRENT PROVISIONS OF LAW

Electronic Services Act of 18 July 2002

Because the Electronic Services Act ("ESA") lays down obligations related to electronic services, rules for excluding the liability of service providers for rendering such services, and rules for protecting personal data, it also applies to portals carrying out crowdfunding activity. Acting as service providers, the platforms render services for beneficiaries, enabling them to conduct campaigns for financing a specific need or project.

Therefore, crowdfunding platforms should operate on the basis of terms and conditions referring directly or indirectly to the provisions of the ESA. This particularly refers to general and specific informational obligations, as specified in Art. 5 ESA (clear identification of the service provider) and Art. 6 (providing the service recipient information about threats resulting from the use of the service, and its function and objective).

OTHER LEGAL PROVISIONS THAT MAY RAISE DOUBTS IN INTERPRETATION

Act on Rules for Conducting Public Collections of 14 March 2014

Because crowdfunding takes places online, the Act on Rules for Conducting Public Collections does not apply due to the literal wording of the definition of "public collection" as "the collection of donations in cash or in kind in a public place" and of "public places" as "generally accessible places, in particular streets, squares, parks, and cemeteries".

The risk analysis performed by the Task Force determined that the scale of fraud with this model of crowdfunding is marginal and it is not necessary to undertake regulatory activities at the current stage. Under this model, fraud means actions aimed at misleading recipients and the platform as to the project, e.g. by announcing an intent to produce a breakthrough device when the true, hidden, intent is not to implement the objective of the project but only to raise funds through skilful marketing of the project.

2. REWARD-BASED CROWDFUNDING

Reward-based crowdfunding implies specific forms of rewards for the donors as consideration in return for a specific amount of money. This is the model mostly chosen by Polish crowdfunding platforms, to perform a wide range of creative projects. But this type of crowdfunding does not always ensure the economic equivalence of the consideration on both sides (the donor often receives an "award" with a monetary value lower than the consideration received by the beneficiary). The projects have a minimum amount (a 100% threshold, which may be exceeded several times) and a timeframe. Typically, projects that do not reach 100% during the established timeframe are deemed unsuccessful and the money is returned to the supporters (the "all or nothing" principle), and the supporters can then donate it to a different project. There are also platforms on the market accepting the "keep what you raise" principle, which means that funds are paid out to the project initiator in any event, even if the project does not reach the established minimum amount. This model is used to finance projects with a clear objective; there are no restrictions as to the initiator, while the platforms charge commissions on the payments received. Should a project be completed successfully, the project initiator is obliged to deliver the return consideration within the timeframe it has declared (e.g. in exchange for payments on a crowdfunding platform, producers of films or series may offer their investors the chance to visit the filming location, include their names in the final credits, or invite them to the premiere).

CURRENT PROVISIONS OF LAW

Electronic Services Act of 18 July 2002

As in the model mentioned in point II.1.

With regard to reward-based crowdfunding, the legal situation in Poland is analogous to donation-based crowdfunding (see point 1). The Task Force found that due to the marginal scale of fraud in this model of crowdfunding, it is not necessary to undertake regulatory activities.

3. PRE-SALES CROWDFUNDING

Under this model, donors provide funds, through the platform, for creating a specific product to be delivered by the beneficiary after some time (even many months later). Pre-sales crowdfunding is based on a sale contract or an unclassified contract similar to a sale contract. Projects have a minimum amount (100% threshold, which may be exceeded many times) and a timeframe. Typically, projects which do not reach 100% during the established timeframe are deemed unsuccessful and the money is returned to the supporters (the "all or nothing" principle).

CURRENT PROVISIONS OF LAW

Electronic Services Act of 18 July 2002

As in the model mentioned in point II.1.

The Task Force is of the opinion that due to the marginal scale of fraud in the model of pre-sales crowdfunding it is not necessary to undertake regulatory activities.

4. CROWDINVESTING (EQUITY-BASED)

The classic model of crowdinvesting is based on the possibility for a company to raise capital to perform a specific project through the issuance of securities, e.g. shares or bonds. The securities are offered through a crowdfunding platform to internet users who support the project by purchasing them.

To make the issuance of shares possible, the project initiator must operate in the form of a joint-stock company or a joint-stock limited partnership. The issue or sale of shares implies the transfer of part of the stock in the share capital (i.e. partial control over the company). By purchasing the shares, the investors hope to gain profits on the investment.

Subscriptions for shares may be accepted exclusively by the project initiator (or a brokerage if it acts as the agent for the subscription). Subscriptions take place through the crowdfunding platform. To subscribe for shares, it is necessary to complete a subscription form and make payment for the shares in an amount equal to the product of the number of shares subscribed for and the issue price per share. The subscription expires if no payment is made. Following the completion of the project, the initiator sends numbered, stamped and signed share documents to the users. Additionally, each investor is entered in the share register.

CURRENT PROVISIONS OF LAW

Electronic Services Act of 18 July 2002

As in the model mentioned in point II.1.

RECOMMENDATIONS FOR FURTHER ACTIVITIES:

The Ministry of Finance should take into account the legislative proposal of simplifying the procedure for making public offerings with a value of up to EUR 1 million

Act on Public Offerings and Conditions for Introduction of Financial Instruments into an Organized System of Trading and on Public Companies of 29 July 2005

The Public Offerings Act applies to crowdinvesting. The current act permits the conduct of a public issue of securities for up to EUR 100,000 during a year without the necessity to prepare a prospectus or information memorandum.

In the course of the Task Force's work, a preliminary legislative proposal was worked out to simplify the procedure for making offerings with a value up to EUR 1 million. The change would introduce provisions under which public offerings of up to EUR 1 million would be subject to submission of a document containing basic information about the issuer of the securities, the conditions and rules of the offering, the purposes which the proceeds of the issue are to be used for, as well as declarations by the persons responsible for the accuracy of the information in the document, including a statement that to their best knowledge and in the exercise of due diligence, the information included in the document is true, accurate and corresponds to the factual state (see Barrier 57 in Annex No. 1 to the Report). The proposed change would make it possible to increase the value of investments made through crowdinvesting without imposing excessive burdens on the entities seeking financing under this approach. The aforementioned limit is consistent with the new EU regulations on prospectuses entering into force in 2019. It was also proposed to simplify the rules for notifying the KNF Office about promotional actions for such offerings. A legislative proposal was submitted to the Ministry of Finance ("MF") to be taken into consideration when amending the Trading in Financial Instruments Act in relation to the implementation of MiFID II.

Commercial Companies Code of 15 September 2000

Commission Regulation (EC) No. 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements (as amended)

The Trading in Financial Instruments Act of 29 July 2005

For offerings of up to the aforementioned limit (EUR 100,000), it is not required to appoint an investment firm to act as the offering agent. However, if the issuer does hire a third party to conduct the offering, it must be an investment firm. Therefore, when contracting specific activities to an operator of a crowdfunding platform which is not an investment firm, the parties should ensure that the contract does not cover any activities constituting the offering of financial instruments in the meaning of Art. 72 of the Trading in Financial Instruments Act. In short, crowdinvesting (equity-based) may entail an obligation to obtain a permit for carrying out brokerage activity with regard to the offering of financial instruments, depending on what concrete activities the operator of the crowdfunding platform intends to carry out.

In relation to the legislative work on the amendment of the Trading in Financial Instruments Act driven by the necessity to implement MiFID II, it is planned to amend the provision defining the offering of financial instruments. This matter was pointed out to the members of the Task Force and the proposed wording of the provision was presented. It was established that to enhance legal certainty concerning the definition of the offering of financial instruments in the light of the new provision, the KNF Office will devise, on the basis of examples presented by the community of crowdfunding platforms, a practical position indicating which activities may be classified as the offering of financial instruments and which may not. The position would be published after the entry into force of the new provisions.

RECOMMENDATIONS FOR FURTHER ACTIVITIES:

The KNF Office should prepare guidelines concerning the application of the amended Art. 72 of the Trading in Financial Instruments Act which will enter into force with the new provisions implementing MiFID II

Regulation of the Minister of Finance of 24 September 2012 on the Mode and Conditions of Proceeding by Investment Firms, Banks Referred to in Art. 70(2) of the Trading in Financial Instruments Act, and Custodian Banks

This regulation applies if the offering of financial instruments is conducted by an investment firm.

OTHER LEGAL PROVISIONS THAT MAY RAISE DOUBTS IN INTERPRETATION

Act on Investment Funds and Management of Alternative Investment Funds of 27 May 2004

Provided that the investors' cash and securities are not stored, the classic model of crowdinvesting is not deemed an alternative investment fund; nevertheless, should the organization of a specific platform provide for the collection of assets from many investors in order to invest them in the best interest of the investors in accordance with an investment policy, it may be classified as an alternative investment fund. Then such platforms would be subject to the Act on Investment Funds and Management of Alternative Investment Funds.

5. CROWDLENDING (SOCIAL LENDING, P2P LENDING)

Crowdlending consists of granting loans, generally in small amounts, between persons where one party is interested in investing the funds (the lender or investor) and the other one is interested in obtaining mostly short-term capital from external sources (the borrower or beneficiary). Transactions are executed through internet portals without the involvement of financial institutions. The investor's payment to the beneficiary is repayable, i.e. the beneficiary is obliged to repay the funds transferred by the investor plus the declared amount of interest.

In practice, there are different models of crowdlending. The most popular examples are presented below.

5.1. MODEL IN WHICH THE P2P LENDING PLATFORM IS NOT AN AGENT IN THE TRANSFER OF FUNDS UNDER THE GRANTING AND REPAYMENT OF LOANS

Under this model, borrowers are matched with lenders. Through the P2P lending internet platform, the borrower declares first which type of loan it is interested in, i.e. it specifies basic parameters of the loan contract it would like to conclude, including the minimum amount, period of financing, purpose of the loan and the fee for the lender. The operator of the P2P lending platform enables potential lenders to access the demand for capital reported by the interested borrower. If interested in the specific loan application, the lenders specify what amount they wish to lend to the borrower (equal to or less than the amount specified by the borrower). Thereby, the operator of the P2P lending platform enables the borrower to receive offers from one or more potential lenders. Should the borrower accept the offer and pay the service fee for the P2P lending platform, the loan becomes legally binding for the lender once the transaction has been finalized. Meanwhile, the operator of the platform prepares a draft loan contract to be concluded by the borrower and the lender (the operator of the platform is not a party to the loan contract concluded by the users). Additionally, the lender receives by electronic means the details of the borrower and the borrower's bank account (formerly verified by the platform) to which the funds should be transferred. The bank transfer is executed independently by the lender from its bank account to the borrower's bank account specified by the P2P lending platform. Following the execution of the bank transfer, the lender marks the respective loan as granted on the P2P lending platform, and the period of the loan between the parties is counted from that date.

With regard to repayment of the funds on the due date of the loan, the borrower receives an electronic reminder about the repayment of the loan, including the bank account of the lender the funds should be repaid to (principal of the loan plus interest). In this model, the bank transfer is executed independently by the borrower from its bank account. Upon receiving the bank transfer, the lender marks the loan as repaid on the P2P lending platform.

In order to enhance the credibility of borrowers for potential lenders, P2P lending platforms make it possible for the borrowers to complete obligatory or voluntary verifications, e.g. of their address, a second document with a photograph, data from the credit bureau, an employment certificate, or invoices issued by suppliers of utilities.

CURRENT PROVISIONS OF LAW

Electronic Services Act of 18 July 2002

As in the model mentioned in point II.1.

Business Freedom Act of 2 July 2004

In the course of the Task Force's work, the CFC pointed out that there was a risk that activity carried out by natural persons who grant loans to other natural persons through P2P lending platforms may be classified as economic activity. Therefore, the CFC prepared a legislative proposal for amendment of the Business Freedom Act ("BFA") to exclude from the notion of "economic activity" the practice under which natural persons grant monetary loans to other natural persons up to a specific limit through P2P lending platforms. The limit was proposed at PLN 200,000 in granted and outstanding loans, i.e. the amount of actually invested capital.

The proposal presented by the CFC was analyzed by the Ministry of Economic Development ("MED"), which emphasized that there was no doubt that lending activity is economic activity. In the MED's view, each area of economic activity is now covered by the definition in Art. 2 BFA and it would not be proper to amend this for the sake of the operation of P2P platforms as proposed by the CFC. The Parliament sometimes decides that certain entities do not carry out economic activity, as they pursue other, non-economic objectives, e.g. schools (see Art. 83a(1) of the Education System Act). However, lending activity is a typical economic activity which may be carried out by business entities on their own account, gainfully, in an organized and continuous manner. In the opinion of the MED, it would be more appropriate on a systemic basis to include this activity in the catalogue of areas mentioned in Art. 3 BFA which are not subject to the other provisions of the act but are by their nature economic activity (such as farmers' offering rooms for rent, selling home-made meals and rendering other services related to tourism on their agricultural holdings).

Furthermore, the MED pointed out that the issue raised is in fact a solution to a wider problem involving small-scale economic activity. The MED takes into account signals concerning high public charges that are a particular burden for micro enterprises. As indicated by the MED, it is planned to launch legislative work on a draft Small Business Act. The draft is to be proposed by Sejm deputies, although based on a draft Act Amending the Social Insurance System and the Act on Promotion of Employment and Labour Market Institutions prepared by the MED. The draft assumes that social insurance contributions would be proportionate to income, significantly reducing business costs, including for businesses carrying out small-scale lending activity. The MED prefers horizontal, far-reaching solutions improving the legal environment for businesses, such as the aforementioned draft Small Business Act, to ad-hoc initiatives aimed at depriving this or that group of entities of the status of businesses within the meaning of the BFA, which entails not only obligations but also rights.

The Ministry of Economic Development also pointed out that work is underway on the draft Business Law, to replace the Business Freedom Act, in which there is a proposal to introduce the institution of "unregistered activity". Under this proposal, economic activity by a natural person whose income from this activity does not exceed 50% of the minimum monthly wage specified in the Minimum Wage Act in any month would not be treated as economic activity. During the work of the Task Force, it was determined that this legislative proposal could also apply to social lending activities, as long as the lender's income falls within a certain limit.

RECOMMENDATIONS FOR FURTHER ACTIVITIES:

The Ministry of Economic Development should finalize the work on the Business Law in terms of implementing so-called unregistered economic activity, which could cover social lending activities

Personal Income Tax Act of 26 July 1991

In the course of the Task Force's work, the CFC proposed to amend the Personal Income Tax Act so that income (revenue) generated from crowdlending would be excluded from income from economic activity but classified as capital gains, subject to the flat rate of 19%. Thus, such income (revenue) would be classified as capital funds in any event, even if generated in the course of economic activity. In the opinion of the CFC, the tax-law status of crowdlending is ambiguous under the act, which is confirmed by inconsistent positions in the literature and rulings issued by the administrative courts.

In the MF's view, the changes proposed by the CFC should not be accepted. The proposed changes cannot be justified by the discrepancies cited by the CFC in the case law of the administrative courts concerning the classification of income (revenue) as income from economic activity or capital funds, as the evaluation is performed by the court on an individual basis. Under the current law, interest on loans is classified as revenue from capital funds if granting loans is not the subject of the taxpayer's business.

In the opinion of the MF, the fact that the term "crowdlending" is not defined makes it impossible to separate loans of this kind from other loans. In consequence, revenue generated by natural persons who carry out economic activity related to the granting of loans (e.g. pawnbroker loans) would be, as proposed, classified as revenue from capital funds. Recognizing that interest revenue is always revenue from capital funds could contribute to the emergence of institutions outside of the control of the state. It is possible to imagine that natural persons who carry out such activities independently will collect funds by incurring credits to lend them to other parties. The fact that loans are granted via internet does not change the very principles under which the investor operates. Loans may be granted in the traditional way many times (in writing). This implies in fact that economic activity is being conducted which should be subject to relevant legal restrictions.

As evaluated by the MF, potential changes to the tax law concerning the classification of revenue from interest as a specific source of revenue should be first preceded by the creation of a legal framework for the investment activity constituting crowdlending.

5.2. MODEL IN WHICH THE P2P LENDING PLATFORM IS AN AGENT IN THE TRANSFER OF FUNDS UNDER THE GRANTING AND REPAYMENT OF LOANS

This model assumes that the process of concluding loan contracts is equivalent to the model mentioned in point II.5.1, but there is a difference in the transfer of funds. Under the loan contract, the funds are transferred in the following way:

- first the lender executes a bank transfer from its private bank account (previously verified by the platform) to an individual bank account maintained for the operator of the platform and assigned to the lender as its individual reference account,

- then, after the operator of the platform has booked the payment to the lender's individual reference account, and a contract has been concluded between the borrower and the lender, the funds (less a commission for the service) are automatically transferred by the operator of the platform to the borrower's private bank account. It may also happen that the lender has funds available on its reference account and grants a loan from those funds without the need to first transfer them from the lender's private account for a new loan.

With regard to the repayment of the loan, as the due date approaches, the borrower will receive an electronic reminder of the payment, including the assigned individual account number which it should use as a user of the P2P lending platform and to which it should transfer the principal plus interest. After the operator of the platform has booked the payment to the borrower's individual reference account, the funds will automatically be transferred by the operator of the platform to the lender's private bank account (previously verified by the platform), or, depending on the lender's instructions, left in the lender's individual reference account, from which the lender may subsequently either grant a further loan or pay out the amount to its bank account.

CURRENT PROVISIONS OF LAW

Electronic Services Act of 18 July 2002

As in the model mentioned in point II.1.

Business Freedom Act of 2 July 2004

As in the model mentioned in point II.5.1.

Personal Income Tax Act of 26 July 1991

As in the model mentioned in point II.5.1.

PLANNED CHANGES TO LEGAL PROVISIONS

Payment Services Act of 19 August 2011

Currently, operators of P2P lending platforms acting as agents in the transfer of funds do not carry out a regulated activity involving the performance of payment services, as they do not use the exception mentioned in Art. 6(2) of the Payment Services Act, under which the requirements in the act do not apply to payment transactions between the payer and the recipient made through a person who carries out activities aimed at the conclusion of the respective contract between the payer and the recipient, or the conclusion of such contract for or on behalf of the payer or the recipient.

However, it should be pointed out that PSD2, which is being implemented by Poland through amendment of the Payment Services Act, will modify the scope of exclusions from the regulation. In accordance with Art. 3 of PSD2, the directive does not apply, inter alia, to payment transactions from the payer to the recipient through a commercial agent who is authorized by contract to negotiate or enter into transactions for selling or purchasing goods or services exclusively for the payer or exclusively for the recipient. The wording of this provision implies that this exclusion, provided for commercial agents, will definitely not apply to operators of e-commerce platforms which operate for both the payer and the recipient. Implementation of this exception will require crowdfunding platforms to change the basis of their operation, because if their operators wish to make use of this exception, they will have to operate on a contractual basis as a commercial agent for only one of the parties to the transaction.

Therefore, it should be pointed out that following the entry into force of PSD2, operators of crowdfunding platforms who act as agents in the transfer of funds for granting or repaying loans will have to comply with the Payment Services Act.

Under the aforementioned model, two additional functionalities offered by P2P lending platforms can be distinguished, as presented below.

5.2.1. POSSIBILITY FOR LENDERS TO INVEST FUNDS AUTOMATICALLY USING INVESTMENT ROBOTS WITH CRITERIA SPECIFIED BY THE LENDERS

This model makes it possible for lenders to automatically grant loans not to a specific borrower (as in the model mentioned in point II.5.2), but to one or more borrowers with a rating (verification) level assigned by the service and specified by the lender and whose loan applications meet the parameters set by the lender (e.g. minimum and maximum amount of the loan, interest rate, number of instalments, verifications by the borrower, province, civil status, age, minimum income, etc).

The operation of the model is described in detail below:

- The service enables the lender to define and open an individual, renewable investment robot which allows the lender to independently set out the conditions which, when all fulfilled, will cause the amount defined by the lender to be automatically invested, and afterwards, when the loan under the respective loan application has been repaid completely, a report on the effectiveness of the conditions defined by the lender will be generated.

- To execute investments by means of an investment robot, it is necessary to:

  - Set parameters for the loan application and the investment amount

  - Ensure that there are sufficient funds for financing the investment in the sub-account maintained in the service for the respective lender.

- If the respective loan application fulfils the conditions of the investment robot but the minimum amount defined by the lender would cause 100% of the amount requested in the auction to be exceeded, the investment in the particular investment robot is abandoned.

- The fee for the service becomes due and payable once the borrower has repaid the total amount of the capital invested in the particular investment robot and the service has prepared the report on the effectiveness of the investment robot.

- At any time, the lender may edit, block or close the investment robot. Should the investment robot be edited, blocked or closed, investments previously made using the investment robot remain unaffected.

- The possibility to independently define the investment conditions (criteria) for the respective investment robot refers to the possibility to:

  - Set the range of the loan amount in which the investment robot created by the lender should invest

  - Specify the evaluation (rating) of the borrower in which the investment robot created by the lender should invest (the service assigns ratings to borrowers)

  - Specify the required positive verifications to be held by the borrower (e.g. verification of employer, identity, finances)

  - Specify the civil status, age, minimum income of the borrower

  - Specify the maximum number of investments in one borrower.

In a simplified version, the model operates as mentioned above, except that the lender selects only the evaluation (rating) of the borrower as the decisive criterion for launching the investment robot created by the lender which is to invest in its loan application, where:

- The service assigns ratings to borrowers
- The rating specifies the borrowing capacity of the borrower on the basis of the scoring systems of the service, which use data delivered inter alia by credit and economic information bureaus, histories of transactions in the customer's payment accounts, and the customer's payment history in the service
- For each level of evaluation (rating), the service specifies the cost of the loan; the higher the evaluation (a borrower with a better evaluation of its borrowing capacity), the lower the cost of the loan.

- To execute the investment by means of the investment robot, it is necessary to:
  - Specify the parameter of the loan application (i.e. the rating of the borrower only) and the investment amount
  - Ensure that there are sufficient funds for financing the investment in the sub-account maintained in the service for the respective lender.

- Additionally, the lender may also use investment strategies prepared by the service based on the borrower's ratings, e.g. select and accept an investment model which will use the funds the borrower has accumulated in the sub-account, e.g. in one of the following ways:
  - By investing 30% of the funds in borrowers with rating A, 30% of the funds in borrowers with rating B, 10% of the funds in borrowers with rating C, 10% of the funds in borrowers with rating D, 10% of the funds in borrowers with rating E, and 10% of the funds in borrowers with rating F
  - By investing 10% of the funds in borrowers with rating A, 10% of the funds in borrowers with rating B, 30% of the funds in borrowers with rating C, 30% of the funds in borrowers with rating D, 10% of the funds in borrowers with rating E, and 10% of the funds in borrowers with rating F.

CURRENT PROVISIONS OF LAW

Electronic Services Act of 18 July 2002

As in the model mentioned in point II.1.

Business Freedom Act of 2 July 2004

As in the model mentioned in point II.5.1.

Personal Income Tax Act of 26 July 1991

As in the model mentioned in point II.5.1.

PLANNED CHANGES TO LEGAL PROVISIONSA

Payment Services Act of 19 August 2011

Analogicznie jak w modelu opisanym As in the model mentioned in point II.5.2.

5.2.2. POSSIBILITY FOR LENDERS TO INVEST FUNDS AUTOMATICALLY BY MEANS OF INVESTMENT ROBOTS WITH CRITERIA SPECIFIED BY THE OPERATOR OF THE P2P LENDING PLATFORM

This model enables lenders to automatically grant loans not to a specific borrower (as in the model mentioned in point II.5.2), but to one or more borrowers according to investment algorithms implemented by the P2P lending platform. Under this model, the lender has no influence over whom it lends its funds to. The decision is taken by the P2P lending platform.

The conclusion of this type of loan contract involves submission of a loan applicant by a verified borrower; if there are sufficient funds of lenders available on the P2P lending platform, a contract is concluded between the parties and the loan is granted.

The funds (principal of the loan) are automatically transferred by the P2P lending platform to the private bank account (previously verified) of the borrower. When an instalment or the whole loan becomes due, the borrower receives an electronic payment reminder including the individual reference bank account assigned to the borrower as a user of the P2P lending platform to which the loan principal plus interest should be transferred.

After the operator of the platform has booked the payment to the individual reference account assigned to the borrower, the funds are automatically transferred to the private bank account (previously verified) of the lender.

The operation of the model is described in detail below.

- The service enables the lender to use the funds it holds for granting loans to natural persons.
- Making a payment for granting loans through the service means that the lender:
  - Concludes a contract with the service for performance of electronic services for a fee, which consists of acting as an agent in the granting of loans for a fee, as the lender
  - Authorizes the service to select persons the lender will conclude loan contracts with
  - Consents to conclusion of loan contracts with any persons deemed by the service to be reliable borrowers
  - Authorizes the service to act as an agent in the conclusion of loan contracts electronically and to cause them to be concluded
  - Automatically concludes loan contracts, electronically through the service, with the persons selected by the service and at a time specified by the service
  - Authorizes the service to transfer funds to the borrowers and to accept payments from the borrowers for the repayment of the loans
  - Authorizes the service to renegotiate the terms of the concluded loan contracts, in particular to extend the payment term
  - Consents to extending the payment term of the loan for the respective borrower provided that it receives a fee for doing so.
- The service continuously informs the lender about the funds used for granting loans.
- The amount paid in by the lender is divided into smaller amounts, as specified by the service. This means that the payment made by the lender is distributed to a number of micro-loans granted to borrowers through the service, in order to decrease the risk that the granted micro-loans will not be repaid.
- The lender cannot select the persons it is to conclude the loan contracts with.

CURRENT PROVISIONS OF LAW

Electronic Services Act of 18 July 2002

As in the model mentioned in point II.1.

Business Freedom Act of 2 July 2004

As in the model mentioned in point II.5.1.

Personal Income Tax Act of 26 July 1991

As in the model mentioned in point II.5.1.

PLANNED CHANGES TO LEGAL PROVISIONS

Payment Services Act of 19 August 2011

As in the model mentioned in point II.5.2.

OTHER LEGAL PROVISIONS THAT MAY RAISE DOUBTS IN INTERPRETATION

Banking Act of 29 August 1997

Under Art. 2 of the Banking Act, "A bank is a legal person established in accordance with statutory provisions, operating on the basis of licences authorizing the performance of banking activities exposing to risk funds entrusted under any repayable basis." And under Art. 171(1) of the law, "Whoever carries out activity consisting of collecting funds from other natural persons, legal persons or organizational units without legal personality without a licence, to grant credits or monetary loans or expose such funds to risk in any other way, shall be subject to a fine of up to PLN 10,000,000 and the penalty of deprivation of liberty for up to 5 years."

When analyzing this model of crowdfunding, it should be considered whether it fulfils the aforementioned premises, i.e. whether the P2P lending platform collects funds from other entities on a repayable basis, to grant credits or monetary loans or expose such funds to risk in any other way.

In formal legal terms, the model described fulfils the premise of accepting funds, as the platform generally accepts payments from lenders and acts as an agent in their transfer to borrowers (as well as in the transfer of funds provided by borrowers for repaying the loans). However, the loan contract is concluded between the lender and the borrower. The contract concluded by the platform with the lender and the borrower is a contract for agency services in the granting of loans. As it is not the platform that grants the loan, it cannot be said that it fulfils the premises enabling its activity to be defined as banking activity subject to the Banking Act.

Also considering the matter in terms of the real, economic content of the transaction, it should be noted that the funds paid in by the lenders are not aggregated, but are strictly tied to specific loan contracts. Therefore, the level of risk the funds of individual lenders are exposed to is not dependent on the condition of the whole portfolio of loans granted through the platform, but is tied to specific loans granted by the given lender.

Act on Investment Funds and Management of Alternative Investment Funds of 27 May 2004

Under Art. 3 of the Act on Investment Funds and Management of Alternative Investment Funds ("IFA"), an investment fund is a legal person whose exclusive subject of activity is investing funds collected by way of public, or also private in situations defined in the act, offering of participation units or investment certificates in securities, money-market instruments and other property rights specified in the act.

Under Art. 8a in relation to Art. 2(10a) IFA, an alternative investment company is a collective investment undertaking (operating in the form of a company, including a European company, a limited partnership or a joint-stock limited partnership), including investment compartments thereof, whose activity is to raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors, which is not a fund operating in accordance with the Community law governing the rules for collective investment in securities.

Finally, it may be noted that in accordance with Art. 287 IFA, any activity carried out without the required permit or in violation of the conditions specified in the IFA consisting of investing assets of natural persons, legal persons or organizational units without legal personality, raised by proposing to conclude a contract for participating in the venture, in securities, money-market instruments or other property rights, is subject to penal sanctions.

On the basis of the above, it may be concluded that one of the characteristic components of the activity of funds (collective investment undertakings), as specified in the IFA, is to raise funds from investors in order to establish a joint pool of assets (an investment portfolio) for investing.

It follows from the description of this model of crowdfunding that the platform is only an agent in establishing legal relationships (loan contracts) which directly link the lenders and the borrowers. Because the platform does not raise funds (assets) to establish a joint investment portfolio, its activity would be beyond the scope of the activity restricted by the IFA to collective investment undertakings.

[2] Understood as an open-end investment fund (OIF), closed-end investment fund (CIF) or specialist open-end investment fund (SOIF)

III. SUMMARY

In the course of the Task Force's work, the representatives of market participants pointed out the need to ensure a transparent legal and regulatory environment for the development of crowdfunding platforms in Poland. It was noted that crowdfunding, as an alternative to credits, bonds or loans, allows financing for many innovative projects (especially in their early stages of development), which in the future can generate profits and bring benefits to the economy.

The purpose of this document is to increase legal certainty for market participants in conducting crowdfunding activities under the current and planned regulations. The Task Force agreed that at this stage of development of crowdfunding in Poland it is not appropriate to create separate regulations for this area.

The variety of the presented models of crowdfunding indicates that each of its forms should be considered on an individual basis in terms of the current provisions of law.

As agreed by the Task Force, an important component of the non-statutory regulations on crowdfunding platforms should include market best practices, in particular with regard to risk management. They would enable standardization of the business practices of the whole market and serve as a tool for building the image of the sector and the security of market participants. The CFC undertook to formulate such a document and invite all entities of the Polish crowdfunding market to adopt it.

RECOMMENDATIONS FOR FURTHER ACTIVITIES:

The CFC should work out market best practices with regard to the operation of crowdfunding platforms in Poland

MEMBERS OF THE SPECIAL TASK FORCE FOR FINANCIAL INNOVATION (FINTECH) IN POLAND

KNF Komisja Nadzoru Finansowego

Związek Banków Polskich

IZFiA Izba Zarządzających Funduszami i Aktywami

Ministerstwo Finansów

Rada Banków Depozytariuszy przy Związku Banków Polskich

SEG od 1993 roku

Ministerstwo Rozwoju

KZBS Krajowy Związek Banków Spółdzielczych

GPW

KDPW

Ministerstwo Cyfryzacji

Kasa Krajowa

KIR

NBP Narodowy Bank Polski

PONIP Polska Organizacja Niebankowych Instytucji Płatności

FIN TECH POLAND

GIODO Generalny Inspektor Ochrony Danych Osobowych

Izba Domów Maklerskich

Koalicja na rzecz Polskich Innowacji

Urząd Ochrony Konkurencji i Konsumentów

PIU Polska Izba Ubezpieczeń

Konferencja Przedsiębiorstw Finansowych w Polsce

Polish Financial Supervision Authority
Pl. Powstańców Warszawy 1, 00-030 Warszawa
Phone: (48) 22 262-50-00, Fax: (48) 22 262-51-11
E-mail: knf@knf.gov.pl
www.knf.gov.pl